UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

CONNELL FOLEY LLP (LK 0985)
85 Livingston Avenue
Roseland, New Jersey 07068
(973) 535-0500
Attorneys for Defendant, United Air Lines, Inc.

LOCKE LORD LLP
3 World Financial Center
New York, New York 10281
(212) 812-8313
Attorneys for Defendant, Allied Aviation Services, Inc.

FRANK GATTO Plaintiff(s), v. UNITED AIR LINES, INC., ALLIED AVIATION SERVICES, INC., and JOHN DOES 1-10 (fictitious names), Defendants.	CIVIL ACTION NO. 10-1090 (ES)(CLW) **CERTIFICATION OF COUNSEL**

1. I, Laurie B. Kachonick, of full age, hereby certify that I am an attorney at law of the State of New Jersey and am an associate in the law firm of Connell Foley LLP, attorneys for defendant, United Air Lines, Inc., in the above-captioned matter.

2. I, Kenneth J. Gormley, of full age, hereby certify that I am an attorney at law of the State of New Jersey and duly admitted to practice law in the United States District Court for the District of New Jersey. I am a member of the law firm of Locke Lord LLP, attorneys for defendant, Allied Aviation Services, Inc., in the above-captioned matter.

3. We submit this Certification in support of defendants', United Air Lines, Inc. ("United") and Allied Aviation Services, Inc. ("Allied") (collectively "Defendants"), Motion for Spoliation Sanctions pursuant to Rule 37.

4. Attached hereto as Exhibit A is a true and accurate copy of Plaintiff's Answers to Interrogatories propounded by defendant, Allied Aviation Services, Inc.

5. Attached hereto as Exhibit B is a true and accurate copy of Plaintiff's Answers to Interrogatories propounded by defendant, United Air Lines, Inc.

6. Attached hereto as Exhibit C is a true and accurate copy of plaintiff's deposition transcript dated January 24, 2011.

7. Attached hereto as Exhibit D is a true and accurate copy of United's Third Request for Production of Documents to plaintiff dated July 21, 2011.

8. Attached hereto as Exhibit E is a true and accurate copy of the letter from Kenneth J. Gormley to plaintiff's counsel dated July 27, 2011.

9. Attached hereto as Exhibit F is a true and accurate copy of the letter from Laurie B. Kachonick to plaintiff's counsel dated October 13, 2011, and authorizations to plaintiff.

10. Attached hereto as Exhibit G is a true and accurate copy of the letter from J. Silvio Mascolo to defense counsel dated November 17, 2011.

11. Attached hereto as Exhibit H is a true and accurate copy of the letter from Laurie B. Kachonick to plaintiff's counsel dated November 28, 2011.

12. Attached hereto as Exhibit I is a true and accurate copy of the letter from Laurie B. Kachonick to plaintiff's counsel dated December 1, 2011.

13. Attached hereto as Exhibit J is a true and accurate copy of the email from Laurie B. Kachonick to plaintiff's counsel dated December 5, 2011.

14. Attached hereto as Exhibit K is a true and accurate copy of the email from J. Silvio Mascolo dated December 6, 2011.

15. Attached hereto as Exhibit L is a true and accurate copy of the email from J. Silvio Mascolo dated December 9, 2011.

16. Attached hereto as Exhibit M is a true and accurate copy of the email from Laurie B. Kachonick to plaintiff's counsel dated December 15, 2011.

17. Attached hereto as Exhibit N is a true and accurate copy of the response from Facebook dated December 7, 2011.

18. Attached hereto as Exhibit O is a true and accurate copy of the email from J. Silvio Mascolo dated January 20, 2012.

19. Attached hereto as Exhibit P is a true and accurate copy of the email from Laurie B. Kachonick to plaintiff's counsel dated January 23, 2012.

20. Attached hereto as Exhibit Q is a true and accurate copy of the email from Laurie B. Kachonick to plaintiff's counsel dated February 1, 2012.

21. Attached hereto as Exhibit R is a true and accurate copy of the email from J. Silvio Mascolo dated February 1, 2012.

22. Attached hereto as Exhibit S is a true and accurate copy of the email from Laurie B. Kachonick to plaintiff's counsel dated February 2, 2012.

23. Attached hereto as Exhibit T is a true and accurate copy of the email from J. Silvio Mascolo dated February 3, 2012, and emails from Facebook to plaintiff dated December 6, 2011 and December 7, 2011.

24. Attached hereto as Exhibit U is a true and accurate copy of the email from Facebook to plaintiff dated December 16, 2011, 9:01 AM.

25. Attached hereto as Exhibit V is a true and accurate copy of the email from Facebook to plaintiff dated December 16, 2011, 9:17 AM.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

By: s/Laurie Kachonick
LAURIE B. KACHONICK

By: s/Kenneth J. Gormley
KENNETH J. GORMLEY

DATED: June 29, 2012

EXHIBIT A

REBENACK, ARONOW & MASCOLO, LLP
111 Livingston Avenue
New Brunswick, NJ 08901
(732) 247-3600
Attorneys for Plaintiff, Frank Gatto

Plaintiff(s), FRANK GATTO vs. Defendants, UNITED AIR LINES, INC., ALLIED AVIATION SERVICES, INC., and JOHN DOES 1-10	UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY Civil Action No. 10-1090 (PGS(ES) **PLAINTIFF'S ANSWERS TO INTERROGATORIES PROPOUNDED BY DEFENDANT ALLIED AVIATION SERVICES, INC.**

1. On January 21, 2008, I was employed as a baggage handler for Jet Blue Airways and working John F. Kennedy International Airport in Queens, New York. I was loading baggage into a Jet Blue airliner at the loading area of Zone 1, covering Gates 1 through 7 Zone. The time was approximately 6:50 a.m. and the weather was dry.

   I was positioned on the right side of the belt loader when a United Air Lines airliner powered into the gate loading area causing a baggage cart and Allied fueling stairs to rapidly move across the area. I was struck by the fueler stairs that were owned and operated by Allied Aviation Services, Inc. I noticed that the Allied stairs were not in the locked position. I sustained injuries to both shoulders, both knees, my right wrist and my neck and back.

2. Benjamin G. Thomas- address unknown.
   Dr. Daniel Wilen, 9202 Ft. Hamilton Parkway, Brooklyn, NY 11209
   Dr. Dennis Hupka, Colonia Family Wellness, 1503 St. Georges Ave., Suite 204 Colonia, NJ 07067
   Dr. Andrew Davy, 1513 Voorhies Ave., Brooklyn, NY 11235
   Dr. A.N. Lopez Del Castillo, 126 Wieland Ave., Staten Island, NY 10309

3. a. Jet Blue Airways, Corp., Ground Operations Supervisor- assist in loading airliners.
   b. 2001.
   c. No.
   d. One week following the accident then July 13, 2009 to the present.
   e. Approximately $60,000.
   f. Jet Blue Airways, Corp., had safety training education throughout the course of the year.

4. $500,000

Pain and suffering:
As a result of the accident, I sustained the following injuries:

- Partial tear of the left supraspinatus tendon, left rotator cuff tear and impingement syndrome requiring arthroscopic left shoulder surgery on January 4, 2010;
- Tear of the right medial meniscus requiring arthroscopic right knee surgery on July 13, 2009.
- Right shoulder impingement syndrome;
- Right wrist sprain;
- Left knee contusion and sprain;
- Cervical, thoracic and lumbar sprains and discogenic injuries.

Wage loss: $35,700
$59,800 total wages lost - $24,100 temporary disability payments through workers compensation = $35,700.

Workers' Compensation lien: $72,346.01

Chartis c/o Insurance Company of the State of Penn. Currently retains the following lien on this matter as of May 27, 2010:
Total lien: $72,346.01
- Medical: $48,246.01
- Indemnity: $24,100

5.

- CMC Occupational Health Services
  Kennedy Medical Offices, Building 198
  JFK International Airport
  Jamaica, NY 11430

- Colonia Family Wellness
  1503 St. Georges Ave., Suite 204
  Colonia, NJ 07067

- Dr. Daniel Wilen
  9202 Ft. Hamilton Parkway
  Brooklyn, NY 11209
  - Left shoulder surgery on January 4, 2010;
  - Right knee surgery on July 13, 2009.

- Dr. Andrew Davy
  1513 Voorhies Ave.
  Brooklyn, NY 11235

Rebenack, Aronow & Mascolo, LLP

111 Livingston Ave.
New Brunswick, NJ

- Dr. A.N. Lopez Del Castillo
  126 Wieland Ave.
  Staten Island, NY 10309

- New York Presbyterian Hospital
  2525 Kings Highway
  Brooklyn, NY 11229

- JFK Medical Center
  65 James Street
  Edison, NJ 08818

6. All medical records received to date are attached hereto. Attached hereto are all incident reports, witness statements and lien correspondence with respect to this matter.

7. Not applicable.

8. Dr. Daniel Wilen, 9202 Ft. Hamilton Parkway, Brooklyn, NY 11209.

   Dale L. Leppard, 22 Corn Hill Drive, Morristown, NJ 07960. Report to be supplied.

   Plaintiff expects treating and/or examining physicians to testify regarding the history as related to each- plaintiff's complaints, their findings upon examination, review of diagnostic testing, their respective diagnoses, any aggravation of underlying conditions the Plaintiff may have had before the accident and their respective opinions concerning the causal relationship between the subject accident and the Plaintiff's injuries. Plaintiff's experts may rely on models and medical illustrations depicting the human anatomy at trial. Any expert reports provided now or in the future do not constitute an adoptive admission as referenced in Sallo v. Sabotino, 146 N.J. Super. 416 (App. Div. 1976) and Skibinski v. Smith, 206 N.J. Super. 349 (App. Div. 1985).

9. All of the injuries described above are permanent in nature. I continue to have constant and severe pain in my left and right shoulder, left and right knee and neck and back. As a result of my injuries, I am limited in engaging in routine social and recreational activities I engaged in prior to the accident.

10. None.

Rebenack, Aronow
& Mascolo, LLP

111 Livingston Ave.
New Brunswick, NJ

CERTIFICATION IN LIEU OF OATH OR AFFIDAVIT

I hereby certify that the copies of the documents and/or reports attached hereto are exact copies of the entire document and/or report and that the existence of other documents or reports, either written or oral, are unknown to me and if such information later becomes known and/or available to me, I shall promptly serve same on the propounding party.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

[signature]

Dated: 7/6/10

Rebenack, Aronow & Mascolo, LLP

111 Livingston Ave.
New Brunswick, NJ

EXHIBIT B

REBENACK, ARONOW & MASCOLO, LLP
111 Livingston Avenue
New Brunswick, NJ 08901
(732) 247-3600
Attorneys for Plaintiff, Frank Gatto

Plaintiff(s), FRANK GATTO vs. Defendants, UNITED AIR LINES, INC., ALLIED AVIATION SERVICES, INC., and JOHN DOES 1-10	UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY Civil Action No. 10-1090 (PGS(ES) **PLAINTIFF'S ANSWERS TO INTERROGATORIES PROPOUNDED BY DEFENDANT UNITED AIR LINES, INC.**

1. Frank Gatto
1008 Green Hollow Drive
Iselin, NJ 08830
D/O/B 2/26/74

2. On January 21, 2008, I was employed as a baggage handler for Jet Blue Airways and working John F. Kennedy International Airport in Queens, New York. I was loading baggage into a Jet Blue airliner at the loading area of Zone 1, covering Gates 1 through 7 Zone. The time was approximately 6:50 a.m. and the weather was dry.

I was positioned on the right side of the belt loader when a United Air Lines airliner powered into the gate loading area causing a baggage cart and Allied fueling stairs to rapidly move across the area. I was struck by the fueler stairs that were owned and operated by Allied Aviation Services, Inc. I noticed that the Allied stairs were not in the locked position. I sustained injuries to both shoulders, both knees, my right wrist and my neck and back.

3. As a result of the accident, I sustained the following injuries:

- Partial tear of the left supraspinatus tendon, left rotator cuff tear and impingement syndrome requiring arthroscopic left shoulder surgery on January 4, 2010;
- Tear of the right medial meniscus requiring arthroscopic right knee surgery on July 13, 2009.
- Right shoulder impingement syndrome;
- Right wrist sprain;
- Left knee contusion and sprain;
- Cervical, thoracic and lumbar sprains and discogenic injuries.

All of the injuries described above are permanent in nature. I continue to have constant and severe pain in my left and right shoulder, left and right knee and neck and back. As a result of my injuries, I am limited in engaging in routine social and recreational activities I engaged in prior to the accident.

4. New York Presbyterian Hospital
2525 Kings Highway
Brooklyn, NY 11229

JFK Medical Center
65 James Street
Edison, NJ 08818

5. MRI, left shoulder, 2/21/09- Integrated Diagnostic Imaging, 1776 Richmond Road, Staten Island, NY, 10306

- Partial tear/tendonitis, Grade III of the distal supraspinatus tendon; bony impingement; joint space narrowing; joint space effusion

MRI, right wrist, 2/18/09- Integrated Diagnostic Imaging, 1776 Richmond Road, Staten Island, NY, 10306

- Minimal fluid of the distal radioulnar joint.

MRI, right shoulder, 3/11/09- Integrated Diagnostic Imaging, 1776 Richmond Road, Staten Island, NY, 10306

- Tendonitis, Grade II of the distal supraspinatus tendon; slight bony impingement; very clight Hill-Sach's deformity; joint space narrowing; joint space effusion.

MRI, right knee, 2/28/09- Integrated Diagnostic Imaging, 1776 Richmond Road, Staten Island, NY, 10306

- Linear meniscal tear of the posterior horn; suprapatellar effusion; slight medial compartment joint space narrowing.

MRI, cervical spine, 12/3/09- MRI of Woodbridge, 1500 St. Georges Ave., Avenel, NJ 07001

- Disc bulges C5-6 and C6-7.

EMG, lower extremities, 10/7/09- Dr. Appasaheb Naik

- L5-S1 right sided radiculopathy

6.

- CMC Occupational Health Services
Kennedy Medical Offices, Building 198
JFK International Airport
Jamaica, NY 11430

- Colonia Family Wellness
1503 St. Georges Ave., Suite 204
Colonia, NJ 07067

Rebenack, Aronow & Mascolo, LLP

111 Livingston Ave.
New Brunswick, NJ

- Dr. Daniel Wilen
  9202 Ft. Hamilton Parkway
  Brooklyn, NY 11209

- Dr. Andrew Davy
  1513 Voorhies Ave.
  Brooklyn, NY 11235

- Dr. A.N. Lopez Del Castillo
  126 Wieland Ave.
  Staten Island, NY 10309

7. Dr. Daniel Wilen
   Dr. Andrew Davy
   Dr. A.N. Lopez Del Castillo
   Dr. Dennis Hupka, Colonia Family Wellness

8. None.

9. a. Jet Blue Airways, Corp.
   b. Ground Operations Supervisor
   c. $1,150
   d. One week following the accident and from July 13, 2009 to the present.
   e. $59,800 - $24,100 temporary disability payments through workers compensation = $35,700.

10. None.

11. None.

12. Medical expenses were paid through Workers' Compensation. Chartis c/o Insurance Company of the State of Penn. Currently retains the following lien on this matter as of May 27, 2010:

    Total lien: $72,346.01
    - Medical: $48,246.01
    - Indemnity: $24,100

13. Not applicable.

14. Benjamin G. Thomas. Address unknown.

15. None at this time.

16. None known to the Plaintiff.

17. None known to the Plaintiff.

18. Plaintiff has not obtained any statements. Statements made by Plaintiff and Benjamin Thomas are attached hereto.

Rebenack, Aronow & Mascolo, LLP

111 Livingston Ave.
New Brunswick, NJ

19. To be supplied upon continuing discovery.

20. Dale L. Leppard, 22 Corn Hill Drive, Morristown, NJ 07960. Report to be supplied.

Plaintiff expects treating and/or examining physicians to testify regarding the history as related to each- plaintiff's complaints, their findings upon examination, review of diagnostic testing, their respective diagnoses, any aggravation of underlying conditions the Plaintiff may have had before the accident and their respective opinions concerning the causal relationship between the subject accident and the Plaintiff's injuries. Plaintiff's experts may rely on models and medical illustrations depicting the human anatomy at trial. Any expert reports provided now or in the future do not constitute an adoptive admission as referenced in Sallo v. Sabotino, 146 N.J. Super. 416 (App. Div. 1976) and Skibinski v. Smith, 206 N.J. Super. 349 (App. Div. 1985).

21. No.

22. None.

23. None.

24. None presently other than over the counter pain medication.

25. No primary physician.
Pharmacy: ShopRite Pharmacy, 877 St. Georges Ave., Woodbridge, NJ.

Rebenack, Aronow
& Mascolo, LLP

111 Livingston Ave.
New Brunswick, NJ

CERTIFICATION IN LIEU OF OATH OR AFFIDAVIT

I hereby certify that the copies of the documents and/or reports attached hereto are exact copies of the entire document and/or report and that the existence of other documents or reports, either written or oral, are unknown to me and if such information later becomes known and/or available to me, I shall promptly serve same on the propounding party.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

[signature]

Dated: 7/6/10

Rebenack, Aronow & Mascolo, LLP

111 Livingston Ave.
New Brunswick, NJ

EXHIBIT C

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
CIVIL ACTION NO. 10-1090(PGS)(ES)

- - - - - - - - - - - - - - - -

FRANK GATTO, :
:
Plaintiff, :
: DEPOSITION OF:
-vs- :
: FRANK GATTO
UNITED AIR LINES, INC., ALLIED:
AVIATION SERVICES, INC., and :
JOHN DOES 1-10, :
:
Defendants. :

- - - - - - - - - - - - - - - -

Transcript of testimony as taken by and before ANGELA SPERDUTO, a Notary Public and Certified Court Reporter of the State of New Jersey, at the offices of Rebenack, Aronow, Mascolo & Miller, LLP, 111 Livingston Avenue, New Brunswick, New Jersey, on Monday, January 24, 2011, commencing at 10:22 a.m.

SCHULMAN, WIEGMANN & ASSOCIATES
CERTIFIED COURT REPORTERS
216 STELTON ROAD SUITE C-1
PISCATAWAY, NEW JERSEY 08854
(732) 752-7800

APPEARANCES:

REBENACK, ARONOW, MASCOLO & MILLER, LLP
BY: J. SILVIO MASCOLO, ESQ.,
111 Livingston Avenue
New Brunswick, New Jersey 08901
For the Plaintiff

CONNELL FOLEY LLP
BY: JEFFREY W. MORYAN, ESQ.,
85 Livingston Avenue
Roseland, New Jersey 07068
For the Defendant United Air Lines, Inc.

LOCKE LORD BISSELL & LIDDELL, LLP
BY: KENNETH J. GORMLEY, ESQ.,
3 World Financial Center
New York, New York 10281
For the Defendant Allied Aviation Services, Inc.

INDEX

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
FRANK GATTO				
MR. GORMLEY	5		163,165,238	
MR. MORYAN		114	164,219,240	

EXHIBITS

NUMBER	DESCRIPTION	IDENTIFICATION
DA	Color copy of aerial view	66
DB	Color copy of aerial view	68
DC	Color copy of aerial view	69
DD	Diagram	89
DE	Ramp Irregularity Report	93
DF	Crewmember Incident Statement	106
DG	State of New York Workers' Compensation Board Employee's Claim For Compensation	127
DH	UPS personnel file	233

LITIGATION SUPPORT PAGE

REQUEST FOR PRODUCTION OF DOCUMENTS

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FRANK GATTO,
291 Sixth Street, Brooklyn, New York 11215, sworn.

MR. GORMLEY: Usual Federal stipulations?
MR. MASCOLO: Yes.
MR. GORMLEY: Parties have agreed to usual Federal stipulations.
MR. MASCOLO: Yes.

DIRECT EXAMINATION BY MR. GORMLEY:

Q Good morning, Mr. Gatto.
A Good morning.
Q My name is Kenneth Gormley. I'm an attorney with the firm of Locke Lord Bissell. I represent Allied Aviation in a lawsuit that you've brought in the District Court in New Jersey.
We're here for your deposition today. If at any time you don't hear my question, understand my question or would like me to rephrase my question, please let me know. I do not want you to answer any question you don't understand or that you don't hear.

I'd ask that you keep all of your responses verbal. In other words, the court reporter who's sitting to my left, to your right cannot take down the nod of a head or an uh-huh. If you could answer yes or no if the question requires a yes or no answer as opposed to shaking your head, I'd appreciate it.
If at any time you need to consult with your counsel, that would be fine, but you need to first answer any pending questions. So if I ask a question, you got to answer it before you speak with your counsel.
If at any time you need a break, just let me know, as well.
Do you understand these instructions?
A Yes.
Q Okay. Have you ever been deposed before?
A No.
Q Where do you currently reside?
A In Brooklyn, New York.
Q And what address?
A 291 Sixth Street.
Q Is that an apartment, a private home or something else?

A It's a private home.
Q And with whom do you currently reside?
A My father and his wife.
Q And how long have you lived at 291 Sixth Street?
A Approximately eight months now.
Q And where did you reside prior to that?
A New Jersey. 1008 Green Hollow Drive.
Q And where is that located?
A Iselin, New Jersey.
Q And the zip?
A 08830.
Q And for what period of time did you live at that location at 1008 Green Hollow Drive?
A Approximately four-plus years.
Q Is that a private home --
A I'm sorry, it would be longer than that. It's five-plus years.
Q Okay.
And was that a private home?
A No.
Q Was it an apartment?
A Condo.
Q Did you own or rent that condo?
A Owned.

Q And the location 291 Sixth Street where you're currently living, is that your home? I mean in terms of do you own that property?
A No.
Q Who owns that property?
A My father, Anthony.
Q And were you the sole owner of 1008 Green Hollow Drive?
A No, sir.
Q Who else owned that property with you?
A Jeanette Breton, B-r-e-t-o-n.
Q Are you currently married?
A Yes.
Q And does your wife reside at 291 Sixth Street with you?
A No.
Q Does she reside at 1008 Green Hollow Drive?
A No.
Q Where does she reside at present?
A I believe it's 70B Taylor Road.
Q And where is that located?
A I think it's in East Brunswick. I'm not a hundred percent sure.
Q Are you separated?

A Yes, sir.
Q Do you have any children?
A Yes.
Q How many children do you have?
A One.
Q How old?
A Five.
Q Boy or girl?
A Boy.
Q Name?
A Frank, Junior, Gatto.
Q Is it Frank Gatto, Jr., or is Junior his middle name?
A No, it's Frank Gatto, Jr.
Q Just wanted to make sure. Thank you.
Are you currently employed?
A No, sir.
Q When was the last time you were employed?
A I believe it was July 14th, three years ago.
Q 2008?
A Yes.
Q By whom were you employed at that time?
A Jet Blue Airways.

Q The last time you were employed by Jet Blue Airways what position did you hold?
A Supervisor of Ground Operations.
Q And for what period of time did you hold that position?
A I was a supervisor for approximately three years.
Q When did you first commence employment with Jet Blue Airways?
A I believe the date is -- I'm not a hundred percent sure. It could be March of '01.
Q Okay.
At times during the course of the deposition I'm going to ask you to -- for times, dates, distances, locations, and, obviously, if you're approximating, that's perfectly fine. I'm not here to test you.
A Okay.
Q I'm not here to try and deceive you in any way. I just want, if you give an approximation just let us know that you're giving your best approximation. I don't expect that you'll remember exact times of certain things.
A Okay.
Q So just so you know, I'm not here to

grill you on the exact date.
A Okay. That's fine.
Q When you began working for Jet Blue in March of 2001 what position did you start with?
A Baggage handler.
Q And what were your duties and responsibilities as a baggage handler?
A Loading and off-loading aircrafts. Also, loading baggage carts in the bag room, pretty much pulling bags off the carousels and loading them to go outside to the aircraft.
Q And for what period of time did you hold the position as baggage handler?
A I believe two years, maybe less.
Q And during the time that you were baggage handler did your duties and responsibilities generally remain the same?
A Yes.
Q And after working as a baggage handler what position did you hold next with Jet Blue?
A I was promoted to lead.
Q Is that a lead baggage handler or a lead something else?
A They just called it a lead agent. It was still in the same department. It was Ground

Operations.
Pretty much it's like a step up. You kind of coordinate bags and start coordinating flights, schedule flights to come in and depart out. And also you still have the same duties as a regular baggage handler, as well. It's just an additional duty.
Q Would you supervise other baggage handlers in that position as a lead agent?
A Yes.
Q Now, when you started at Jet Blue in or about March of 2001 where was that located?
A J.F.K. International Airport, and we were located at Terminal 6.
Q And during, just so we're clear, during the course of your entire employment with Jet Blue from March of '01 through on or about July 14, 2008 did you always work at Terminal 6 at J.F.K.?
A No, I didn't. I had multiple promotions at the job. Some entitled me to fly out to other cities and stations to assist and train other members of the company.
Q Okay.
Were you based -- let me ask it a different way, and I understand your answer. I

appreciate it.
A Um-hum.
Q Were you based at Terminal 6, though?
A Yes.
Q And that was during the entire course of your employment.
A Yes. That was my home.
Q One other instruction I failed to give earlier is occasionally I'm going to ask you a question that you're going to already know the answer to after I get out two or three words.
If you could let me finish my question before you answer and I'll do my best not to start asking you a question while you're answering one. It makes it easier for the court reporter. It keeps a cleaner record and you'll also know exactly what I'm asking for because sometimes as I ask a question you may think it's one thing and it turns out to be another and we don't want you to give an incorrect answer. Okay?
A Okay.
Q What period of time did you hold the position of lead agent?
A Approximately, I think it was just maybe about two years or less.

Q So approximately up until about 2005. Is that fair?
A In that range, I would say.
Q And did you receive another promotion in or about 2005?
A Yes.
Q And what position did you take on in 2005?
A It was called Blue Corp. Yeah, Blue Corp.
Q Okay.
And what were the duties? Was that the title, Blue Corp.?
A There was no actual title for that position. It was a test run for approximately, I think it lasted about a year-and-a-half to two years. I wasn't working in that position for that long. I was there just under a year.
Q And what did you do as part of Blue Corp.?
A You would actually attend classes, train other members in other cities, load and off-load aircraft, supervise other agents, cover other members in the other city, in the other cities, from their duties. Also, customer service,

like ticket agent. And also that included training other members in safety.
MR. MORYAN: May I hear the answer again, please?
(The answer is read by the reporter as follows:
"Answer: You would actually attend classes, train other members in other cities, load and off-load aircraft, supervise other agents, cover other members in the other city, in the other cities, from their duties. Also, customer service, like ticket agent. And also that included training other members in safety.")
Q What -- the classes that you would attend when you were part of Blue Corp., what did those classes involve?
A That would be customer service, ticket agenting and working the computers in the system, checking in passengers and shifting passengers, accommodating them, basically.
Q Let me back up for a second.
Blue Corp., what was -- well, could you describe what Blue Corp. is or was?
A Basically it was a jack-of-all-trades.

You had to know all the aspects of the airline. Whatever they needed you to do, you had to know it.
Q And were you selected as one of several people to participate in Blue Corp. or were you the one person that participated?
A I was one out of a strong dozen.
Q And did anyone from Jet Blue advise you as to what you would be doing after you completed Blue Corp. or the training, the classes, the supervision, et cetera?
A No. No, sir.
Q So you took classes, you indicated, in customer service, checking in passengers. Did you take any classes with respect to baggage handling as part of Blue Corp.?
A Not as part of Blue Corp., no.
Q Did you have training as a baggage handler before becoming part of Blue Corp.?
A Yes.
Q And what did that training consist of?
A Properly loading and off-loading baggage, weights of baggage.
Q Anything else?
A Pretty much that was it. They would teach you the codes on the tickets, like LAX and

PBI would be West Palm Beach, things like that.
Q Did you receive any training with respect to the operation of baggage tugs or other types of equipment to move baggage?
A Yes. Yes.
Q Other than the training that you received from Jet Blue with respect to your duties and responsibilities as a baggage handler did you receive any training from anyone else such as Port Authority of New York and New Jersey or any other governmental agency?
A Besides the driving classes from -- that Jet Blue provided, I don't a hundred percent recall Port Authority. I know they did advise -- like they were around the area when we were learning.
The company had started eight years -- well, when I started it was eight years ago. It was still a new airline, so Port Authority was always in the area maintaining and watching what we were doing. But other than that, I don't recall off the top of my head them ever actually teaching us anything like that.
Q Okay.
More observational? Would that be

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fair?
A Yes.
Q Sorry to jump around.
Going back to Blue Corp., you indicated you would be supervising other individuals in other airports and other locations. What types of people would you be supervising in terms of position?
A They would be baggage handlers, as well, other lead agents. And also the work would, you know, pertain to going back to pretty much where I started from as loading bags and bringing aircrafts and pushing and pulling, towing out aircrafts.
Q As a baggage handler did part of your duties and responsibilities include acting as a wing man, bringing the planes in, bringing the planes out?
A Yes.
Q What about utilizing and operating tugs to push aircraft off gates?
A Yes.
Q And push them out through the galley, I mean through the alley, rather?
A Yes.
Q When you started with Jet Blue did you

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receive any training with respect to safety?
A Yes.
Q And what did that training consist of?
A The training consisted of how to properly load and off-load aircrafts, safety with driving, operating vehicles on the ramp, wing walking. I mean, I could go on and on.
Q What else?
A Properly connecting the tow bar to the aircraft and to the pushback, how to use airstarts.
Q Anything else?
A Lav and water. Lav, l-a-v. I'm sorry.
Q When you were part of Blue Corp., was this more of a managerial position? Were you managing people?
A No.
Q When you were going to complete Blue Corp., when you completed the test run, so to speak, were you going to be in more of a management position or were you going to go back to Ground Operations?
A I actually left Blue Corp. due to a personal issue at home. I had a mother that was ill, so I had to come back to the hub. And at that

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time they had a supervisor position open and when I notified them of my family illness, they offered me the position to come back to the base, the hub, which was Terminal 6, and I accepted the position and that's when I became a supervisor.
Q And was that the Ground Operations supervisor?
A Yes.
Q And was this in or about 2006, 2007?
A Yeah, approximately maybe more towards '6, I believe, because I was promoted after that again.
Q Okay.
Well, let's start with Ground Operations supervisor.
A Yeah.
Q What were the duties and responsibilities of Ground Operations supervisor?
A Same as baggage handlers. You would still have to, you know, complete those duties, loading and off-load aircrafts and, you know, assist with basic daily operations that I mentioned before when we pretty much first started. Also, you would have to schedule flights, in and outbounds, schedule crews. You were allowed to

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give and approve swaps, for crew members to trade shifts, shift trades.
Q Anything else that you can recall?
A Yes. There would be a lot of daily reports and incident reports if things would happen on the job, incident reports, daily recap to the managers.
Q What was the daily recap to the managers?
A What did it consist of?
Q Yes.
Was it just telling them what happened that day?
A Basically whatever you were assigned to, what zone you were assigned to. If you controlled, say, like gates 1 through 5, that would be your zone. It would probably have to be like zone 1, if I can recall correctly.
You'd have to let them know anything that happened, any bag that missed a flight, where did that bag go. If any crew members were injured for the day, any delays you would have to account for. Early pushes you would have to account for. Pretty much anything that went on in that area you were responsible for and had to report.

Q I think you indicated earlier you received another promotion beyond Ground Operations supervisor?
A Yes. A short period after I returned, I don't recall the year, but I was promoted to safety, safety supervisor, at J.F.K., as well. That's the hub that I was at.
Q Was that for the entire Terminal 6 facility?
A Yes.
Q Did you have any training in terms of your promotion to safety supervisor for Terminal 6?
A I worked with corporate very closely, corporate safety. I did -- I had some training. It was mostly like paperwork and investigations that I was handling and promoting safety within the terminal.
Q Did your duties and responsibilities in the safety supervisor position include supervising all of the other Jet Blue employees as to the safety requirements of Jet Blue?
A Yes.
Q And did this job also include implementing the things you learned and making sure that others followed the safety procedures?

A Yes.
Q Did your duties and responsibilities in the safety supervisor position include anything beyond what I just mentioned?
A Yes.
Q What else did it include?
A Also, as needed, if you needed to go outside and go back to your regular supervisory duties which would be loading, off-loading, assisting other supervisors, that's what you would have to do, as well.
Q So you would also assist in ground-handling operations. Is that correct?
A That's correct.
Q Okay, my question, maybe I was unclear, was in terms of the safety supervisor, did you have any other duties and responsibilities as safety supervisor other than what I had mentioned in my two or three questions?
I know you still did the ground-handling operations but I meant with respect to safety, did you have any other responsibilities with respect to safety, things you did on a regular basis?
A Yes.

Q What else would you do?
A It would be pretty much maintaining and ordering the safety wands, insuring that the eye wash stations were in their proper place, defibrillators were installed in Terminal 6.
Q Anything else?
A Yes. Monthly reports and graphs. I issued them to corporate safety as well as our immediate management, attended corporate safety meetings, handled aircraft damages and investigation reports.
Also, coordinated with corporate safety classes for the -- for crew members that wished to attend. These were extra classes that weren't mandated but people that were into being safe and promoting safety, as well, I had additional classes and teachers come down to assist with that process.
Q Anything else? I mean, there might be others but things that you recall as you sit here today.
A Handle MSDS, material sheets, forms, audits, and addressed all Ramp Irregularity Reports that were submitted and follow up, report it back to corporate security and immediate management.
Q Is this the position you held at the

time of the accident?
A No.
Q Okay.
How long did you hold this position of Ground Operations supervisor as well as safety coordinator, so to speak?
A Right. Safety, I handled that position for approximately a year.
Q And what happened at the end of that year?
A At the end of that year there was a change in management. I was put back outside to Ground Operations supervisor.
Q So after that one-year period were you no longer responsible for the safety of the -- implementing the safety practices and procedures of Jet Blue at Terminal 6?
A You always, as a supervisor namely in respect to that you always had to promote that.
Q Of course.
A And I actually took a lot of that knowledge with me and still did that, but as far as the tasks go, that was issued to another member.
Q And that's what I meant by my question. I know safety is always of utmost

importance. But your responsibility for the group collectively and the terminal collectively, it was no longer just your responsibility. Somebody else was taking that position over.
A That's correct.
Q Do you know when that occurred, approximately?
A It had to be maybe the end of '06, beginning of '07.
Q When you said there was a change in management, what did you mean by a change in management, somebody was brought in to do that or something else?
A Well, actually, no. The company was actually changing all their management and there was other members coming in from other airlines. They weren't just hiring from within anymore. They started bringing in representatives from other airlines as far, like Continental, United, and other areas and other airlines they were bringing in.
Q So when you no longer were responsible for that safety position that you've described, what was your position that you went back to? What was the name of it?

A It was back to Ground Operations supervisor.
Q And was that the position you held at the time of the accident?
A Yes.
Q Okay.
And at the time of the accident what did that position -- what were the duties and the responsibilities that that position had?
A That would be going back to what I stated before, coordinating and scheduling crews, to assign crews to flights that were coming into the gates, pushing planes out into the field, loading and off-loading aircraft, assisting your leads if they were falling behind or just in general just to assist to give them an extra hand, and back to daily recaps and reports.
Q In this position as ground supervisor, Ground Operations supervisor, what percentage would you say of your job responsibilities were physical in nature as opposed to administrative and managerial?
A Ninety-five.
Q Ninety-five percent physical.
A Yes.

Q And when you held that prior position as Ground Operations supervisor with that additional safety responsibility for the terminal and the people that worked there, what position -- what percentage of your position at that time was manual labor, physical labor, as opposed to managerial and sitting behind a desk?
A I would say fifty/fifty to be fair.
Q As Ground Operations supervisor in or about 2007 and 2008, at or around the time of the accident, how many people were you responsible for supervising?
A For initially being Ground Operations supervisor, my first position?
Q Well, the position you held at the time of the accident, how many people at that time were you responsible for supervising?
A A minimum of thirty.
Q And a maximum?
A I'd say about forty to forty-five.
Q And what about in your position with the Ground Operations supervisor with the safety position, as well, how many people did you supervise at that time?
A Well, partial of that was a lot of

office work. I wasn't actually in charge of anybody.
I did have one assistant at the time. That was pretty much towards the end, the last couple of months, they assigned me another assistant because the work load was very heavy.
Basically I was the go-to guy. Anybody that had safety-related issues for fuel spills or if any fuel spills actually even happened, I was the go-to guy. I mean, I don't know if it would be fair to say I was in charge of the whole ramp or just in charge of my one person that I was assigned to towards the end.
Q Were you in charge of everybody in terms of safety within that terminal when you held that position?
A Of Jet Blue Airways, all the crew members of Jet Blue Airways for Ground Operations.
Q Let me go back before we go to the accident.
What's your highest level of education?
A I took my GED. Passed my GED.
Q Okay.
What's your highest level that you attended in either high school, grammar school or

something else?
A I was pretty much into my eleventh -- almost senior year.
Q And when you left high school, where did you work?
A I worked for, I believe it was like Petland Discounts.
Q And what type of position did you hold with them?
A Just -- I tell you the truth, I don't know what they called it, it was so long ago. I was like eighteen, nineteen, I think. I don't even know the position. I guess customer service, I would say.
Q Is it fair to say you worked in the store?
A Yes.
Q And you assisted the customers?
A Right.
Q Fair enough.
How long did you work for Petland Discounts?
A About a year, year-and-a-half tops.
Q And where did you work after that?
A I did undercover security for

Bloomingdale's.
Q Was that in Manhattan or in one of the other locations?
A Yes. 59th and Lexington, I believe.
Q Were you employed directly by Bloomingdale's or another outside company?
A Bloomingdale's.
Q And for what period of time did you hold that position?
A I don't recall.
Q Could you provide us an estimate as to how many months, years?
A How long did I work for the company?
Q Yes.
A Approximately a year-and-a-half to two years.
Q And was that always in undercover security?
A No.
Q What else did you do at Bloomingdale's?
A Well, before actually undercover security I was actually just security. Then they promoted me to plainclothes.
Q And after you left Bloomingdale's where did you work next?

A Ricki Lake and Tempest Bledsoe show as security.
Q And for what period of time did you work for Ricki Lake?
A Approximately another year, a year-and-a-half.
Q Was this on-stage security or?
A It was both. It was on stage. Also working the metal detectors and also audience and pretty much walking with Ricki Lake or Tempest behind them a certain amount of feet so they can walk their dog and nobody takes their dog. It wasn't an official bodyguard but I was there for backup.
Q And for what period of time did you work -- actually, you told me one-and-a-half years. I apologize.
A Yes. And that was for both Ricki Lake and Tempest. It was one company. I don't recall the name of the company but you would go back and forth from show to show.
Q And after that where did you work next?
A I think I went to Jet Blue a while after. I was out of work for a period of time and then I went to Jet Blue.

Q Okay.
When you left the undercover security job at Bloomingdale's was there any reason, reasons?
A I just thought it was getting out of hand. I left on my own. I wasn't terminated or nothing like that.
Q When you say it got out of hand, you're talking about the job itself?
A Violence. Lot of violence in the 59th and Lexington store which was.
Q Were you ever involved in any altercations with any customers or thieves or anything?
A Well, of course, yes.
Q Okay.
Any physical altercations?
A Rarely.
Q Were you ever injured in your capacity as an undercover security for Bloomingdale's?
A No.
Q When you left Ricki Lake and Tempest, what were the circumstances in which you left that employment?
A That was a temporary to -- a temp to --

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what do you call it -- a temp to hire, I guess. It was a temporary job. It lasted a little longer but I was never officially hired there. It was a lot of fill-ins, coverages that I was doing for other members that actually got me into the company.

Q Were you ever injured in any situations while you were working for Ricki Lake and Tempest?

A No.

Q And is it fair to say the next job you had, then, was Jet Blue?

A Yeah. That's, like I said, I'm trying to remember the exact order for you but I.

Q Okay.

A Okay.

Q We're not holding you to it. It's just for informational purposes.

A All right.

Q I'm just going to use the rest room. Why don't we take two minutes and if you need a break anytime during today, use the rest room, get a drink, just need a moment, feel free to take it.

A Thank you.

MR. GORMLEY: Thanks.

(There is a recess.)

Q When did you receive your GED?

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A I don't recall the year.

Q Was it shortly after high school, several years after high school, something else?

A It was within, I believe, approximately a few months.

MR. MORYAN: I'm sorry, a few months of leaving high school?

THE WITNESS: Yeah, a few months, tops I'd say a year, if I can recall correctly.

MR. MORYAN: Okay.

Q Have you gone to any trade schools or other types of education?

A No.

Q Other than the on-the-job education that you've had?

A No.

Q So now we'll go back to Jet Blue. When you were employed by Jet Blue were you a member of a union?

A No.

Q Did there come a time when you had an accident when you were employed by Jet Blue?

A No.

Q You were never involved in any accidents when you were working for Jet Blue?

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A Oh, beside the one that I had?

Q Yes. It's a lead-in question to set the tone.

A Yes.

Q When did your accident occur?

A It was January 21st.

Q What year?

A Let's see. Was it '07? '06? No. What was the date? I don't remember the year.

Q You have to answer the question. He can't.

A '08.

Q Of '08?

A Yes.

Q And where did the accident occur, generally speaking? We'll get into the specifics in a minute.

A On the ramp.

Q Was that the ramp at J.F.K.?

A Yes.

Q Did you have a normal shift in January of 2008? What I mean by shift is time you'd start, time you'd end.

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A They scheduled you a normal shift. You wouldn't work a normal shift.

Q Well, what time did you arrive at work in January of 2008, specifically on the day of the accident, January 21?

A I'm scheduled for five a.m. I'm sorry, 4:30.

Q And what time did you arrive at work that day?

A I don't recall.

Q Would it have been on or about 4:30 a.m.?

A Most likely before 4:30.

Q And where would you report -- where did you report on January 21st, 2008?

A It would be most likely the supervisors' office.

Q Would that be your office as the Ground Operations supervisor?

A It's a shared -- I'm sorry.

Q Go ahead.

A It's a shared office by additional supervisors.

Q And what were the other supervisors' responsibilities? Were they similar to yours or

did they have different? Who did they supervise?
A The same.
Q So there's more than one Ground Operations supervisor.
A Yes.
Q How many were there in January of 2008 at J.F.K.?
A Approximately three to four on shift.
Q And were you broken down into working in a specific zone or zones?
A Yes.
Q And how were the zones set up at J.F.K. for Jet Blue terminals?
A Everything was temporary. Like I said, due to the change of management they were pretty much juggling ideas and trying new things on a daily basis. But the zones would normally consist of, if you're a zone 1, I believe it was gates 1 through -- 1 through 5.
Q And how many zones did you say there were?
A It broke down to three zones at Terminal 6 and then they had the old T-way building which was an additional two zones but I didn't work over there, so I wasn't sure how that was a hundred

percent set up. I go from time to time to assist but I wasn't scheduled there. I had the old Terminal 6.
Q Okay.
Terminal 6 is formerly the Eastern Airlines terminal, if I recall?
A Yeah. And the one next to it was T-way, TWA.
Q That's the one that's landmarked. Correct?
A Yes.
Q And do they have gates off of the old TWA terminal?
A Yes, they did.
Q And that would be a separate zone.
A That's correct.
Q Okay.
And zone 2, where would that be?
A Zone 2 would most likely be 6 through -- 6 through 9, gates 6 through 9.
Q And zone 3?
A Zone 3 is 10 through, I think it's 12 or 14.
Q And would there be a fourth zone for the TWA building, old TWA building?

A Yes.
Q And where would your office be in relation to zone 1, 2, 3 or 4?
A Offices were located closer to zone 2.
Q Upon arriving at work on the day of the accident, what was the first thing you did, if you recall?
A The first thing I did when I arrived?
Q Yes. I mean, first duty and responsibility.
I understand you probably took your jacket off, got a cup of coffee, did something else, but in relation to your job what was the first thing you did?
A First thing was to see who I was assigned as far as crew members go and see who actually clocked in so I would know what I was working with, and then you would check for sick calls, as well.
Q What time of the day did your accident occur?
A I don't recall the time exactly. I would say maybe towards the afternoon, maybe a little bit before.
Q After checking for sick calls, checking

who's in and who's out and who's clocked in and who's clocked out, what did you do next that day?
A Scheduled and assigned the crews to the gates.
Q And what would you do next? What did you do next?
A Briefing.
Q And what did that entail?
A Briefing consisted of any issues of safety issues, any flights that specifically had to go out on-time departures for VIPs that were on the flight. Focused flights is what you called them. A small portion was safety involved. It consisted of possible break schedules and first flight out.
Q What time was the first flight out?
A I don't recall.
Q Was the first flight out at the same time each day or did it vary?
A It depended on your zone, what zone you're assigned to, and what flight was coming into that gate, it would be a certain departure. You could come in at five and you could have a flight that's going out at 5:30.
Q In your capacity as the Ground Operations supervisor were you assigned to any

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specific zone or were you -- did you work all four zones on a given day back in January of 2008?
A I'd be assigned -- it would change weekly, I believe, at the time when they were juggling the ideas around of zoning supervisors. They would juggle it around. Some supervisors would take assignments with more gates, some would be assigned with less gates, and that was all assigned by the actual manager.
Q Who was the manager?
A At the time there was multiple managers. There was Mike Esposito, Rob Howe, and I believe Mike Hritz.
Q Were any of the three individuals you just mentioned, Mr. Esposito, Howe or Hritz, were any of those your direct supervisor to whom you reported?
A Esposito was my direct supervisor for a period of time.
Q Who was your direct supervisor on the date of the accident?
A Mike Esposito, manager. He would be the direct manager.
Q So would it be more proper to say direct manager as opposed to direct supervisor?

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A Yes.
Q Okay.
He is the person to whom you reported up the chain of command?
A He would be the first, yes.
Q And you indicated he was your direct manager for a period of time. Were any of the other individuals direct manager of yours for other periods of time?
A They would alternate according to who needed off, who was on vacation, swaps. Kind of the same way that crew members would be but mainly Mike Esposito was my manager.
Q Do you know if Mr. Esposito is still employed by Jet Blue?
A Yes, he is.
Q Are you still in touch with Mr. Esposito?
A Well, no, not really.
Q When was the last time you spoke with Mr. Esposito?
A Oh, wow.
I don't recall. It's --
Q Go ahead. Sorry. I didn't mean to interrupt you.

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A I think the last time I seen Esposito was when I left the job.
Q How is it that you're aware that he's still employed? Is that from some other source of information?
A No.
Q After completing the briefing what would you do next on the day of the accident?
A I pretty much get in touch with the leads, make sure everybody's outside on the gates, coordinate with the baggage room to insure that the baggage was out on the proper gates for whatever flights they were going out on to make it a little easier for the crew just to start getting in, loading up the aircraft.
Q When you've completed up to this point in time this task, what time of day is it? How long does all of this take, the briefing, the checking, the getting in touch with the leads?
A It has to all be done before your first flight out which could vary. Depending on the schedule and what zone you were in, it would vary. Sometimes different supervisors would prepare the briefings.
You'd have to go over e-mails and

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whatever the bosses wanted you to touch base with or whatever you felt was pertinent to the day, to the shift, you had to address it at the meeting. So it could be a matter of, you could have thirty minutes or you could have five. It varied from day to day.
Q Do you recall on the date of the accident which of these tasks -- did you perform all of these tasks on the date of the accident?
A The briefing, I'm not a hundred percent sure but I'm pretty sure 'cause I was at almost all the briefings. I made sure of that, so the crew members would know what's going on. I was the go-to guy, the point man, for most of when it came to briefing and, you know, getting the point across to the crew members what needed to be done for the day.
Q Okay.
After you got in touch with the leads and coordinated with the baggage room, what did you do next on the date of the accident?
A I probably did my walkaround.
Walkaround consists of going over, monitoring the gates, making sure there's no FOD out. FOD, F-O-D. It's foreign object debris. I'm so used to

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the lingo.
Yeah, basically that's what you would really do. You walk around, radio checks which, you know, you just call each lead that you're assigned to as a supervisor and make sure that everybody's on up and running, everything's okay, no guys have disappeared anywhere for coffee or breakfast for an hour, you know, things like that.
Q Okay. And what would you do after that?
A After that I would walk most likely walk to the bag room to make sure that my flights are being loaded properly, speak to the actual crew members that were pulling the bags and most likely assist with them as I'm speaking to them, like load bags from the carousels to the baggage cart, let them know, as well, what flights were important to go out, if there was any VIPs on the flights where bags needed to be pulled off the carousel immediately.
Q What did you do next on the day of the accident?
A I probably went back to the office to go over any e-mails that I wasn't able to go over, which would be like a little bit of office time

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which would be about fifteen minutes.
Q At this point in time, and I know it varied from day to day but I want to know about on the date of the accident.
To the best of your ability can you approximate what time of day we're dealing with up at this point where you've been through your e-mails, you've done all the things we've discussed so far, what time of the day are we at? I know it won't be exact.
A No, I would say it would be approximately six a.m.
Q Do you recall what you did next on the day of the accident?
A No.
Q At some point in time during the -- on the day of the accident did you assist in the loading or unloading of any aircraft?
A Yes.
Q When for the first time did you do that on the day of the accident?
A I don't recall which aircraft I assisted with first.
Q Okay.
At the time of your accident were you

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assisting in the loading or unloading of an aircraft?
A Yes.
Q And was that the first aircraft that you loaded or unloaded that day?
A I don't recall.
Q Where specifically did your accident occur?
A Terminal 6.
Q Okay.
Can you be anymore specific than that, gate number, zone number?
A It was gate -- it was gate 2. Gate 1. It was either 1 or 2. I don't.
Q That's zone 1?
A That was considered zone 1, yes.
Q I didn't mean to interrupt you if you still had more thoughts.
A No, I'm trying to remember how it was set up and I'm trying to get a visual. That's my answer.
Q Okay.
Were you loading or, alternatively, unloading an aircraft at the time of the accident?
A We were uploading the aircraft.

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Q When you say "We," who was with you?
A The lead on the flight was Benjamin Thomas.
Q Was anyone else working on uploading that flight other than Mr. Thomas and yourself?
A Yes.
Q Who else?
A I don't recall the other names of the crew members that were in the aircraft.
Q Was there anyone else on the tarmac with you and Mr. Thomas at the time of the accident?
A Would you consider the crew members in the aircraft on the tarmac?
Q Well, I meant physically standing on the tarmac, so let me clarify my question.
Was there anyone other than you and Mr. Thomas physically standing on the tarmac?
A In the area where the incident happened, no.
Q That's what I'm talking about, the general area of that aircraft.
A Okay. 'Cause I could give you probably fifty names of people that were all over the tarmac but in that area where we were at, no, it was

myself and Benjamin Thomas.
Q What type of aircraft were you uploading at the time of the accident?
A It was an A320.
Q And do you know flight number, tail number, registration number of that aircraft?
A I don't have it. I don't know off the top of my head, no.
Q Do you have any documentation in your possession or to which you have access which would indicate the tail number or the flight number of that aircraft?
A Not in my possession at this moment.
Q When you say not at this moment, is it at home or someplace else?
A It would be someplace else.
Q Where would it be?
A It possibly could be at my lawyer's office.
Q Okay.
And what document are you referring to specifically?
A That would have the tail number?
Q Or the flight number, yes.
A It would be the Ramp Irregularity

Report. There's also an incident report, statements.
Q Okay. We'll get to that in a moment.
A Um-hum.
Q How did it come that you were assisting Mr. Thomas in uploading this aircraft? Did you receive a call or something else?
A Yes. It was a radio call.
Q And from whom did you receive the radio call?
A Benjamin Thomas.
Q And when he called you what did he say to you? What did you say to him?
A He called my name over the radio. I responded. He asked me to come to the gate for assistance.
Q Where were you when you received this call?
A The exact location I'm not a hundred percent sure. I know I was on the ramp, though, at the time. I was only possibly a few gates away.
Q How did you get from the location you were at when you received the call to where Mr. Thomas was located?
A I walked.

Q Did Mr. Thomas indicate to you why he needed assistance?
A No.
Q When you arrived at the aircraft where Mr. Thomas was located did he advise you as to why he needed assistance?
A He said he had some additional bags from the bag room. That was the first issue. And he said that he just wanted to make sure they got out on the flight on time and he wanted a supervisor present to assist and to have a visual on the bags that came out the bag room.
Q And did he indicate why he needed a visual from the supervisor on the bags?
A Well, at Jet Blue they would hold leads accountable for anything that could or would go possibly wrong. So when Benjamin called me to the gate, he just wanted to make sure.
They weren't really pressed for time. So that's why I asked him. But he said, "No, I just wanted to let you know the bags should have been out at this time."
We had plenty of time to load them but they're coming out of the bag room to our nonspecific time that it came out. Like we had a

certain cutoff time but it was before the cutoff time.
He just said, "I just want to let you know that the bags are here. Can you help me assist in loading them?"
I said, "No problem."
Q Were the bags on time for that specific flight?
A Technically they were on time at the aircraft, yes.
Q Upon arrival what did you do first?
A I spoke to Benjamin Thomas.
Q And what was the sum and substance of that conversation?
A Within that couple-of-second period of time speaking with him I began to upload the bags with Benjamin.
Q Okay. The conversation you had with Benjamin, is that the conversation you just recounted two or three questions ago about why he wanted you there?
A Yes.
Q Other than why he wanted you there, did you discuss anything else with Mr. Thomas before uploading baggage?

A No.
Q What side of the aircraft were you uploading the baggage from?
A I was -- what side of the aircraft?
Q Yes.
A The aircraft was facing towards me. I was on the right side.
Q Okay.
So if you're looking at the forward portion of the aircraft, you would be on the right side of that aircraft?
A Yes.
Q In other words, if you're sitting on the aircraft and you're looking straight ahead, baggage would be loaded from the right side of the aircraft. Correct?
A Correct.
Q And what manner or system was utilized to upload the baggage from the tarmac onto the aircraft? Did you use a belt loader or something else?
A Yes, a belt loader.
Q And was the belt loader in place when you arrived at the aircraft?
A Yes.

Q And how long were you uploading baggage prior to your accident occurring?
A I don't --
Q On that specific flight how long were you there uploading baggage before the accident occurred?
A Say no more than like five minutes.
Q And where were you standing at the time that the accident occurred?
A I was on the right side of the belt loader.
Q And where was Mr. Benjamin?
A He was on my left side.
Q When you say you were at the right side of the belt loader, is that the right side of the belt loader as you're looking at the aircraft?
A Yes.
Q And was Mr. Benjamin on the opposite side of the belt loader?
A Yes.
Q From the time that you arrived at that aircraft until the time of your accident, were you located at any other locations other than to the right of the belt loader?
A No.

Q What was the weather on the date of the accident?
A From what I can recall, I believe it was clear out.
Q In other words, the ground was dry?
A Yes.
Q What was the temperature, approximately, warm, cold?
A It was a nice day out. It was not cold, by any means.
Q Was it windy?
A No.
MR. MORYAN: I'm sorry, may I hear those last two questions and answers again, please? I was reading and not writing. I apologize.
(The questions and answers are read by the reporter as follows:
"Question: What was the temperature, approximately, warm, cold?
"Answer: It was a nice day out. It was not cold, by any means.
"Question: Was it windy?
"Answer: No.")
MR. MORYAN: Okay. Thank you.

Q At the time that your accident occurred where were you standing?
A On the right side of the belt loader.
Q Okay.
And what were you doing just prior to the accident?
A Loading bags from the baggage cart to the belt loader.
Q At some point in time did a baggage cart or fueler stairs come in your direction?
A Yes.
Q Where were the fueler stairs located prior to the accident?
A They were behind me.
Q Where were the fueler stairs the first time that you observed them prior to the accident, like what distance from you?
A I couldn't give you feet off the top of my head. They were up against the actual wall.
Q Which wall is that?
A It would be the wall that was adjacent to the gate.
Q Is that up against the terminal building?
A Yes.

Q And where was the baggage cart just prior to your accident? Where was that located?
A That was -- it was almost in the same area.
Q Which one was closer to you?
A The baggage cart was closer to me.
Q Now, I know you can't give me exact feet or dimensions but could you tell me approximately what distance they are to you? I mean, when I say that, like a football field, a street, ten feet, something else?
A I'd say approximately ten feet.
Q Just prior to the accident did you notice anything specific with respect to these two items, the baggage cart and the fueler stairs?
A No.
Q Okay. Were they stationary just prior to your accident? In other words, they weren't moving?
A That's correct.
Q And at some point in time did they move in some direction?
A Yes.
Q Which direction did they move?
A It would be in my direction.

Q When they moved in your direction, did they move in your direction from the location that you just described up against the terminal wall?
A Yes.
Q You indicated they were approximately ten feet from you. Was that the baggage cart or the fueler stairs or both?
A They were approximately ten to twelve feet away from me. I'm trying to think about a visual from what they were but I know you said approximate. But the baggage cart was there and the stairs were like right next to it. They were staged like kind of like together.
Q But the baggage cart was the closer of the two items than the fueler stairs or was the fueler stairs closer to you before they moved?
A No, the cart was closer.
Q Prior to your accident did you hear anything or observe anything with respect to those fueler stairs and --
A I heard the crash.
Q The crash of what?
A Of the stairs -- of the stairs and the baggage cart.
Q Okay.

When you say you heard the crash, where were they located when you heard this crashing noise?
A They were still located behind me.
Q What crashed into what?
A Well, when the plane came in, the stairs -- the stairs crashed into the baggage cart and they spun and the stairs hit me.
Q Did the baggage cart come in contact with you?
A It was the stairs.
Q Only the stairs.
A Well, they collided into each other and they hit me. That's the way it happened.
Q Okay. No, I understand.
My question is, which item hit you? Did both of them hit you, did one of them hit you or something else?
A The stairs hit the cart and spun around and then the stairs, I guess, and the cart hit me.
Q Where were you standing when the stairs and the cart hit you?
A I was still in my same location.
Q Right next to the baggage cart.
A Yes.

Q I'm sorry, right next to the belt loader.
A Yes.
Q Did they hit you simultaneously at the same time or did one hit you and then the other hit you?
A I remember the stairs in my face. That's what I can recall.
Q Which direction were you facing at the time that you first saw the stairs moving as opposed to stationary?
A When I -- I actually seen the plane come in and when he turned I felt the jet blast. As I'm looking at the aircraft, I turned around and I seen the stairs hit the cart and then they both, like I said, they both hit me, but it happened so fast. I tried to brace myself as best as I could.
Q Okay.
Well, let's break that down.
A Okay.
Q You see an aircraft coming in. Where's the aircraft coming from?
A From the landing strip. He was powering in.
Q Was he powering in under his own power

or was he being towed?
A Under his own power.
Q Was this a Jet Blue aircraft, United, something else?
A United.
Q Where was the United aircraft going to?
A I don't -- I don't recall the gate that it was coming to but it was exactly across from the gate that we were working at.
Q What distance was this aircraft from you the first time that you observed it?
A It had to be a few hundred feet.
Q Did you watch the aircraft taxi into the gate?
A I heard it come into the gate, so I turned around real quick and then I turned back around to start loading bags. I didn't pay too much mind to it.
Q When the aircraft was coming into the gate area, we'll call it gate area, not off of what you described as the landing strip --
A Right.
Q -- did you see it at that time, before it turned into the galley -- alley? Sorry.
A Did I see it?

Q Before it turned into the alley.
A Yes, I seen it come in.
Q Okay.
And then what did you do next?
A I was continuing loading 'cause the plane when it comes in, it was on my left side, so I could see it from the corner of my eye. So I'm leading bags and I seen the plane coming in and then he paused. Then he powered up to turn into the gate. And usually at that gate is a tow-in.
Q Just so I have some perspective here, when he's coming in off of what you described as the landing strip before he comes into the gate, is he over your left shoulder or is he directly to your left?
A He's on my -- he's to my left. I don't know about directly but if I'm loading this way, I could see him from the corner of my eye coming in, so he'd just be to my left.
Q From the time that you first observed him, the aircraft, to the time that the baggage cart and the fueler stairs made contact with you, what period of time transpired?
A I tell you the truth, I don't know. I was working. I wasn't thinking about how much time

the plane comes into the gate.
Planes come in and out all the time for us. It's a daily thing. You just don't. Unless it's not coming into your gate you really don't have nothing to worry about unless it's right next to you. That plane wasn't right next to me.
Q Just can you give an approximation? Was it one minute, ten minutes?
How long were you -- do you know how many bags you kept loading from the time you saw the aircraft the first time to the time of the accident?
A What's your exact question?
Q The question is from the time you first saw the aircraft till the time of the accident how much time transpired?
I know you can't give me an exact time but I want to know --
A I'm trying to think what it would be.
It had to be within three minutes.
Q After seeing the aircraft from the corner of your eye, as you described, for the first time to the time of the accident did you make any other observations with respect to that aircraft at any time before the accident?

A It stood in that alleyway. Not the alleyway. The alleyway would be outside.
When he came into the gate, he was supposed to make a right to pull into that gate but there was no -- he just paused. He just paused there, which kind of raised a red flag but I didn't -- I don't know why. Like I said, I just kept loading.
Q When you say it raised a red flag, what do you mean by that?
A Usually they don't pause. Usually all planes just come into the gate. They never pause.
Q So if I understood you correctly, what you're saying is from the time that they come off the -- I just want to use your word -- from the time they come off the landing strip to the time they go into the gate, they don't normally pause?
A No.
Q Do you know whose baggage cart it was that was involved in this accident?
A Jet Blue.
Q Okay.
At the time you were loading this aircraft were you loading it in the forward portion of the aircraft, the aft or someplace else?

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A Forward.
Q How close -- well, can you describe the dimensions of the A320 that you were loading?
A Dimensions as far as?
Q Length. Do you know the seating capacity?
A Seating capacity for an A320 I believe -- it's like two hundred.
Then they removed seats. It's been so long. They removed seats and made it more leg room. I don't know an exact number.
MR. GORMLEY: Can we go off the record for a second?
(There is a discussion off the record.)
MR. GORMLEY: You can just mark this.
(Color copy of aerial view is marked DA for Identification.)
Q Mr. Gatto, I'm going to show you what's been marked today as defendant's exhibit A for Identification. I'd ask you to take a look at this.
Just so you know, I'll represent to you that this is what's known as a screen shot. Basically it's a shot of what was on my computer at one point in time the other day and it was taken

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off a website called bing.com which is Microsoft's mapping website and, obviously, it's an aerial view but I'm going to ask you if you -- I'm going to draw your attention specifically to the photograph.
I'm not concerned about anything from the website up, you know, their addresses and tabs for the website. I'm primarily focused only on the aerial view of what appears to be an airport.
I'd ask you to take a look at it and once you're done looking at it, let me know.
(The witness refers to DA for Identification.)
A Okay, I'm done looking at it.
Q Okay.
Can you tell me what's depicted -- I'm going to refer to this simply as a photograph even though it's not a photograph but for ease for the rest of the deposition I'm going to refer to these as photographs. They're not really photographs. They're screen shots. But can you tell me what this aerial view depicts?
A What is it?
Q Yes, what area, where?
A Tell you the truth, I don't know what

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this is. I couldn't tell you from above like that.
Q Okay.
A This possibly --
Q Well, if you can't tell, I'm going to show you -- I could show you a couple photographs and maybe you'll be able to figure it out and, if not, we can go from there.
MR. GORMLEY: Why don't we mark that as B.
(Color copy of aerial view is marked DB for Identification.)
(There is a recess.)
Q I'll give you defendant's exhibit B. Again, it's an aerial view photograph of an airport. Do you recognize that location, anything in that photograph?
A It looks partially familiar. I can't really make it out with these pictures.
Q Okay.
Let me ask you this: Do you recognize the United terminal at J.F.K. in defendant's exhibit B on the left-hand side?
A Not from this picture, no.
Q Do you recognize the Jet Blue terminal to the right in this photograph?

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A It looks familiar but I never seen aerial views, looked at them and pinpointed exact locations. I'm not familiar with this.
Q So you're not able as you sit here today looking at either defendant's exhibit A or B to indicate whether or not the area where you had your accident is depicted in any portion or location on either one of these photographs.
A No.
MR. MORYAN: No meaning you're not able.
THE WITNESS: No, I'm not able.
MR. MORYAN: Okay, thanks.
Q I'll try one more and then if you're unable, we'll go a different route.
MR. GORMLEY: Mark that as defendant's exhibit C.
(Color copy of aerial view is marked DC for Identification.)
Q I'm going to show you now what's been marked as defendant's exhibit C. Again, I'd ask you if you recognize the location of the area that's depicted in that photograph?
A It's still unfamiliar.
Q It's still unfamiliar?

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A Yes. It's not -- I can't pinpoint any of it on here.
Q Okay. Go next to defendant's exhibit B. Actually, withdraw that.
Are you familiar with the compass directions of the area where you were working? In other words, were you facing north or south at the time of the accident?
A No, I'm not familiar with compass directions.
Q Okay.
You indicated earlier that the Jet Blue aircraft -- I'm sorry, the United aircraft that was coming into the gate area, that it would normally pause -- that it would not normally pause. How long was that aircraft paused for?
MR. MORYAN: Objection to form.
You may answer.
A I don't know.
MR. MORYAN: You said you don't know?
THE WITNESS: Yes, I did say that.
MR. MORYAN: Okay.
Q How long from the time that you heard the aircraft for the first time until the accident occurred?

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A I couldn't tell you that either.
Q When the aircraft pulled into the gate, approximately how far was that aircraft from where you were standing?
A Like I said, it was a few hundred feet.
Q Could you yourself physically feel any jet blast?
A Yes.
Q Can you describe the baggage cart that was involved in the accident in terms of size, dimensions?
A I'd say approximately about six feet high by five feet wide.
Q Color?
A Of the baggage cart?
Q Yes.
A White.
Q And could you describe the baggage cart? In other words, does it have enclosures? Is it open? Is it something else?
A It's square.
Q Is this a baggage cart that would be operated by hand or would it be connected to a tug or something else?
A It would be connected to a tug.

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Q Do you know who put the baggage cart in the location it was prior to your accident?
A No, I don't.
Q Would it have been a Jet Blue employee?
A I don't know.
Q Do you know how much the baggage cart weighs?
A Baggage carts, they weigh approximately seventeen, 1800 pounds.
Q Did it have four wheels?
A Yes.
Q Did it have any braking mechanism?
A Yes.
Q Where is the braking mechanism located?
A It would be located in the front of the baggage cart.
Q When you say in front, is that in front next to any specific part or portion or component of the baggage cart?
A It would be -- you would know the front of a baggage cart if you see the tong. Tong is a long piece of steel with a hoop on the end of it.
Q And where are the brakes located relative to the tong? Are they near the wheels? Are they near something else?

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A The tong is connected to the brake mechanism. The brake mechanism is attached to the front wheels of the baggage cart.
MR. GORMLEY: Could you read that back, please?
(The answer is read by the reporter as follows:
"Answer: The tong is connected to the brake mechanism. The brake mechanism is attached to the front wheels of the baggage cart.")
Q Is there a switch or a control that controls whether the brakes are engaged or not engaged?
A The tong.
Q So the tong would control whether or not the brakes were operational.
A That's correct.
Q Prior to your accident did you have any opportunity to take a look at this baggage cart and tell whether the brakes were -- whether the tong was in a position where the brakes were engaged?
A All tongs are in position at all times unless connected to a vehicle.
Q Is that like a default setting?

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A (No response.)
Q In other words, if --
A If the tong is up, that means it's in the locked position.
Q And was the tong up on this baggage cart prior to your accident?
A Yes.
Q And did you actually physically observe that or --
A I physically saw that, yes.
Q The staircase that you were discussing earlier, could you describe that staircase in terms of its dimensions?
A It's about eight, nine feet high. A basic set of stairs made out of steel with rails on the side, also mounted on wheels, four wheels.
Q Anything else that you can describe about the fueler stairs?
A No, they're basic stairs.
Q How did you know these were fueler stairs as opposed to any other type of stairs?
A They're marked Allied.
Q Where is the demarcation for Allied on the stairs?
A I don't recall if it was on the actual

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-- they used to have like a little plate on the side, Port Authority plates. I don't know if it was in the rear or if it was actually sprayed in the front 'cause that's how they used to mark some of their equipment. They used to spray the Allied name on it.
Q When you say sprayed, you mean spray-painted?
A Spray-painted, that's correct.
Q When you say it's either on the plate, is that like a license plate or I just want to understand what you mean by plate.
A All equipment on the ramp has to be Port Authority-plated. If not, it's not allowed to be on the ramp. It means it's just supposed to be plated, anything.
Q Okay.
But when you say plated, are you referring like it might be smaller but is it like a license plate? Is it a tag or is it something else?
A It's a license plate.
Q And on this Port Authority, what we'll call a license plate, does it have the name Allied on it?

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A No. I don't believe so.
Q Okay.
Well, when you said there was a plate on the side that would have the name Allied, I just want to understand what you mean by that.
A I don't mean a license plate. I meant like an additional plate maybe on the piece of equipment that they sprayed their logo on.
Q What are these stairs generally used for based on your observations?
A My observations those stairs are used for Allied fuelers who cannot reach the -- cannot reach the aircraft to fuel it and they use the hose, they climb up on the ladder and fuel the aircraft.
Q And based on your observations where are these fueler stairs generally kept when they're not in use?
A Stairs are usually -- there's no one specific location for stairs or equipment. Staging equipment they would call it but there's no specific area where Allied would stage their equipment.
Q Is there any specific location where they were not to stage their equipment?

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A Specific location to not stage any equipment in the general rules would be on the runways and, you know, anyplace where the aircraft would actually need to pull into, like direct line of contact, the lines that would bring the aircraft in. There was like yellow lines painted so they would have guidance to come into the gates. You couldn't park any equipment in those areas.
Q Were either the fueler stairs or the baggage cart located in an area where they were not supposed to be based on your observations that day?
A No.
Q Had you seen fueler stairs in a same or similar location as they were on the date of the accident on other occasions prior to your accident?
A Did I see?
Q Fueler stairs located in a similar location as where they were on the date of your accident but prior to your accident.
A (No response.)
Q In other words, did you ever see fueler stairs in that location before?
A In that area, yes.
Q Do fueler stairs have locks and brakes?
A They do have locks/brakes, I would

say.
Q What word would you use for them so I can use yours?
A I would say brakes.
Q Where were the brakes located?
A The brakes are located on the -- next to the wheels.
Q How many brakes do they generally have?
A I'm not a hundred percent sure but I would say four. They're like a step brake. It's a metal plate and it goes from left to right and you just step on it, kind of like what they use for strollers, baby strollers. It would be the same type of mechanism.
Q On the date of the accident did you have any occasion to look at the brakes on the fueler stairs?
A I don't inspect other equipment.
Q I meant on the ones -- I'm sorry, I meant to be more specific.
Did you ever take a look at the brakes on the fueler stairs of the stairs that were involved in your accident?
A I did not.
Q Did anyone else?

A Benjamin Thomas.
Q Did you have any conversations with Mr. Thomas regarding the brakes?
A Yes.
Q And what conversation did you have?
A When he came in the office to check on me before I was taken over to the Medport area, he said that the brakes weren't on on the stairs and he just pushed it right back to the wall.
Q Where did this conversation take place?
A When he -- after he pushed out the flight, I was waiting for a ride to go to medical.
Q So you were in the office?
A Yes, I went to the office.
Q All right, we'll get back to that in a second.
I'm going to go back to the accident sequence.
You may have answered this question already, so if I did ask it, I apologize. I just want to lead into the next step. But what struck you first, the baggage cart, the fueler stairs or a combination thereof?
A It was the stairs.
Q What part of the stairs came in contact

-- what part of your body came in contact with the stairs?
A It was my full body. I remember putting up my arms -- my hands to brace myself and the stairs came into my arms and pushed me back and hit me on the bottom 'cause I kind of tilted back.
Q When you put out your hands to brace yourself, were you able to stop the forward motion of the fueler stairs?
A After I was pushed back, yeah, I was able to slow it down.
Q How far were you pushed back?
A I don't recall.
Q Do you know if it was one step, ten steps?
A I don't recall.
Q When you were pushed back did any part of your body, the back of your body, come in contact with any object or item?
A No.
Q How far -- I just want to get the configuration here.
If you're standing next to the baggage -- if you're standing next to the belt loader, were the fueler stairs and baggage cart directly in

front of you or behind you or to the side?
A We went over that.
Q I just want to make sure.
A They're behind me.
Q They're behind you.
A If I'm loading the bags from the belt loader, the objects were behind me.
Q Okay.
And as was the aircraft that came in. Is that correct?
A Which aircraft?
Q The United aircraft.
A Yes.
MR. GORMLEY: Jay, do you have any problem with him drawing a picture of where this all occurred?
MR. MASCOLO: No. I was going to suggest it.
MR. GORMLEY: I was hoping to use the photographs.
Q But why don't we do this. We're going to have you -- that's for you, unless somebody's got a cleaner sheet.
I'm going to have you draw a photograph of the area of where everything was in proximity to

one another.
MR. MORYAN: Draw a diagram.
Q Draw a diagram. Sorry.
Leave enough room for -- these are the items I'm going to have you draw so you know what I want exactly.
A I could do a roundabout.
Q I'm not expecting that you're going to have the exact distances --
A I could just draw where the plane came in and where I was standing and where he's pulling in.
Q Exactly.
A That's what you want?
Q Let's start with this. What's the easiest thing for you to start with?
A Maybe I could start with where the United plane came in.
Q Why don't you draw where the plane came in.
A This is the runway. This is the runway over here where he came in.
Q Now, where's the gate in which it pulled into?
A Okay. Going this way.

The gate where who pulled into?
Q Where the United aircraft pulled into.
A Okay. It came in this way.
Q Drawing an arrow.
A Yes. And his gate would be around here in this area.
Q Okay.
Was he pulling into a gate that has a jet bridge?
A I don't recall if it had -- it has to have a jet bridge. People got to get off.
Q Well, they could use stairs to get off, as well.
A No, no, it had to have a jet bridge. I don't remember visually seeing one but I'm ninety percent positive that there's a jet bridge there.
Q Okay.
Do you know what kind of aircraft it was, by the way, the United aircraft?
A They told me -- Benjamin told me and he said the other crew members stated that it was a triple 7. I don't -- I can't say what kind it was. I wasn't.
Q Okay.
A What else?

Q All right.
Now, where's your aircraft relative to the gate where this aircraft pulled into?
MR. MASCOLO: You want to label that United gate?
THE WITNESS: Yeah, United.
A And where was our aircraft?
Q Yes, where was your aircraft?
A Our aircraft was over here, about over here.
Q Okay.
Now, where's your belt loader?
A The belt loader is -- here's the front door. The belt loader is here.
Q Could you write belt loader next to that?
A Um-hum.
Q And on the airplane could you write Jet Blue?
(The witness complies.)
Q And where were you standing just prior to the accident?
A It would be on the right side, me.
Q Could you write your initials?
A FG.

Q And could you put a BT next to where Mr. Thomas would have been at or around the time of the accident?
A He was -- BT.
Q Was he in front of the belt loader?
A There was a baggage cart here.
Q There was a baggage cart between --
A Well, it was right here. This was a baggage cart and here's the belt loader where I was standing and Benjamin Thomas was kind of in the center but kind of like next to me at the same time. We were together standing next to each other loading bags up to the belt loader.
Q Up to the belt loader.
A Um-hum.
Q So this belt loader, I'm not sure how I'm going to describe this but I'll try. The little box, why don't you put in that little box why don't you put --
A Bag cart?
Q Bag cart, yes.
(The witness complies.)
Q Basically you're taking items off this baggage cart and putting them on the loader that go up to this Jet Blue aircraft. Is that correct?

A That's correct.
Q Now, where is the baggage cart and the fueler stairs prior to the accident? Where are they located?
A They're located over here.
Q Okay. You indicated earlier, and correct me if I'm wrong, that these were next to the terminal building? Could you draw the terminal building?
A Something like that. Terminal. Something like that.
Q Was the terminal building circular?
A I don't know. I just drew it like that. I don't remember.
Q Okay.
And that's gate 1 or 2. Is that correct?
A That's correct.
Q Okay.
And when the United aircraft -- could you indicate to the best of your ability as to where the baggage cart and the fueler stairs moved from and to?
A Yes. They were here where the X is and then they moved this way and hit me.

Q Okay.
A Here's where the plane would -- the runway goes -- the alley goes in this way and then there's, you know, there's additional gates here. But the plane came in. After he paused he came in this way and powered up to get into the gate to pull in.
Q So in the location where you've testified he paused, can you put the word paused?
A Yeah. He paused about here.
Q And just to go back so we understand later, you put an X. Can you put -- the X in the photograph, that depicts the area of the location of the baggage cart and the fueler stairs prior to your accident. Correct?
A Correct.
Q And then you've drawn a straight line. Can you make it an arrow?
A Yes.
Q Okay.
And that arrow goes from that X to another X which is above the FG. Correct?
A That's correct.
Q And FG is you.
A That's correct.

Q Okay.
And if I understood you correctly, that's the direction from which the baggage cart and the fueler stairs moved from the first X to the second X.
A That's correct.
Q Okay.
MR. GORMLEY: Off the record.
(There is a discussion off the record.)
Q And just so I'm clear, the distance -- you indicated there was approximately a hundred feet, if I recall, between yourself and the United aircraft?
A I believe I said it was a few hundred feet.
Q A few hundred feet.
A Yeah. I'm not good with footage and stuff like that but it was quite a distance.
Q Okay.
Were any of the other United aircraft on any other gates that morning?
A I don't recall.
MR. GORMLEY: Can we have the court reporter mark that as defendant's exhibit 4?
MR. MORYAN: Defendant's exhibit 4. Do

we have 1, 2 and 3, yet?
MR. GORMLEY: Good point. Make it D.
(Diagram is marked DD for Identification.)
Q And just so we're clear, defendant's exhibit D for Identification, that's a depiction that you're making today of the area in or around where your accident occurred. Right? Is that correct?
A That's correct.
Q And, obviously, the distances and locations, exact locations of things are not drawn to scale but does this fairly and accurately depict in general terms the area where your accident occurred and locations of items in that area?
A Yes, that's a basic, very basic, drawing.
Q Okay.
But it's a fair and accurate representation based on what you recall of the accident, of course not drawn to scale, but a fair and accurate representation nonetheless. Correct?
A Yes.
Q Did the baggage cart ever come in contact with you?

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A Not with me personally, no.
Q Where did the -- how did the baggage cart -- the baggage cart stopped at some point. How did the baggage cart stop?
A By hitting me.
Q So the baggage cart did come in contact with you.
A The baggage cart -- the stairs hit the baggage cart which hit me.
Q Okay.
A The stairs hit the baggage cart. The stairs and baggage cart hit me.
Q At the same time or at different times?
A I just seen them coming together. But I was hit by the stairs, if that's what you're asking me.
Q Well, I'm asking you did the cart hit you, as well?
A It didn't hit me.
Q Did it hit anything else?
A The stairs hit the cart.
I don't know what you're asking me. It's not --
Q I'm not trying to trick you.
A I'm not saying that.

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Q Let me ask it again because I understood the first part but I don't understand the second part. It's probably me and not you.
You indicated that the stairs hit you. Correct?
A Correct.
Q When you put your hands out, it hit you and you were pushed back. Correct?
A That's correct.
Q The baggage cart, did the baggage cart ever hit you?
A No.
Q Okay. I thought you answered differently before. I may have misheard you. That's why I'm asking.
Did the baggage cart hit anything else before stopping? I know it was hit by the stairs but after it was hit by the stairs did it hit anything else?
A No.
Q Did it come to rest someplace?
A Yes.
Q Where did it come to rest?
A On the stairs.
Q After the stairs hit you did they

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remain upright or did they turn over?
A They were upright.
Q Okay.
But after they hit you and you stopped them, were they still upright?
A Yes.
Q At any time did they fall over?
A No.
Q At any time did the baggage cart fall over?
A No.
Q When you indicated that the baggage cart ended up on top of the stairs, how is that -- could you describe that?
A I don't mean rolled over. I meant together.
Q One pushed against the other.
A Yes.
Q Do you know what gate -- I may have asked you this and I apologize because I've gone back and forth a bit.
Do you know what gate number the United aircraft was coming in on?
A No.
MR. GORMLEY: Okay.

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Could you mark that, please, defendant's exhibit E?
(Ramp Irregularity Report is marked DE for Identification.)
Q Before I get into this, let me ask you, after being struck by the stairs, what happened immediately next?
A I stood there for a second, kind of leaned up against another piece of, you know, like to sit for a second. Like I just leaned against the belt loader because Benjamin was yelling if I'm okay, if I'm okay, and I was like, "Yes, I think I'm okay."
I said, "I don't know." I said, "I'm shaken up." I said, "I'm kind of hurting right now, too."
So he said, "Well, go to the office and go tell Mike."
So I said, "Yeah, I'm gonna go over there. I'll talk to you in a little bit."
And that's exactly what happened. I went over to the office. I notified my manager.
Q Other than your hands did the stairs come in contact with any other part of your body?
A I believe it was my right knee.

Q When you were leaning against the belt loader right after the accident, could you describe any pain that you were having?
A For a minute I was kind of numb and shaken up and by the time I started walking, which was only a couple seconds after Benjamin told me to go to Medport or, you know, go see Mike, I started feeling some throbbing and stuff but I didn't -- I just went to Medport.
Q Where were you feeling the throbbing?
A My neck, my shoulders, back. I felt the knee was hurting a little bit.
Q How long after the contact between yourself and the stairs did you leave the scene?
A It was almost immediately.
Q Other than the conversation you just recounted with Benjamin regarding going to the office and notifying your manager, did you have any other conversation about the accident at that moment?
A No.
Q Did you have any conversation with anyone from -- anyone other than Benjamin before leaving and going to the office?
A I believe we placed a phone call to

Operations, our Operations, and told them what happened, that a United plane just pulled in and jet-blasted myself and the equipment into me and to call them. They were supposed to call them, from what I recall. They were supposed to call United tower, I think it was.
Q Who placed the phone call?
A I don't recall if it was me or Benjamin.
Q Okay.
And do you know who you or Benjamin spoke with?
A I believe the call was taken by a gentleman named Rob in our Operations Department. I can't recall the last name.
Q Was there any other thing -- anything else discussed with Rob other than what you've described thus far?
A No, we just told him what happened to me. That was it.
Q Were you bleeding from any part of your body?
A No.
Q How did you get from the accident location to your office?

A I walked over.
Q And after you arrived, what did you do next?
A I notified Mike Esposito, the manager on duty.
Q What happened next?
Actually, what did you say to Mike?
A I told him what happened with the -- what happened to me on the gate.
Q Did you tell Mike that you had injured any part of your body?
A I told him I was hurting.
Q And did you tell him which part of your body was hurting?
A I don't recall telling him which part. We didn't discuss body parts, I don't recall.
Q Did anyone call an ambulance or anything like that to the scene?
A No, I was driven.
Q Driven where?
A To J.F.K. Medport.
Q Were the Port Authority police ever on the scene of the area where the accident occurred?
A No.
Q Did you have any conversations with

anyone from United yourself with respect to the accident before leaving the area?
A No.
Q Did you talk to anyone other than Benjamin Thomas before leaving the area?
A Yes.
Q Who else did you speak with?
A Michael Esposito.
Q I mean the accident area on the tarmac.
A No.
Q Was Mr. Esposito on the tarmac?
A No.
Q Other than speaking with Benjamin Thomas did you speak with anyone else, whether it be from Jet Blue, United or anyone else, with respect to the accident before leaving the scene of the accident?
A No.
Q Do you know if anyone other than Benjamin Thomas actually witnessed your accident occur?
A I don't know of, no.
Q Okay.
How long after you arrived back in the

office did you leave for J.F.K. Medport?
A I was taken immediately.
Q Did you complete a Ramp Irregularity Report in connection with this accident?
A Yes.
Q When was that completed?
A I believe it was the same day.
Q Okay.
Was it before or after you went to J.F.K. Medport?
A It was after, I believe. Yes.
I'm not a hundred percent sure.
No, I think I finished it, I came back and they told me to write a Ramp Irregularity Report and Benjamin was already writing his incident report, the statement.
Q I'm going to show you what's been marked as defendant's exhibit E for Identification and I'd ask you to take a look at that and I'll ask you some questions about it.
A Um-hum.
(The witness refers to DE for Identification.)
A All right.
(There is a discussion off the record.)

Q Okay.
Did you have an opportunity to review defendant's exhibit E?
A Yes.
Q Okay. And what is this document?
A This is a Ramp Irregularity Report.
Q Can you tell me generally how a Ramp Irregularity Report is prepared? Is it something you type up, something someone else types up, something else?
A Anybody can type it up.
Q Okay.
And who typed up this Ramp Irregularity Report?
A I don't recall if it was me or one of the crew members assisted when I came back or when I was leaving.
Q Who provided the information that's contained in defendant's exhibit E?
A I did.
Q This looks like an e-mail that's printed out of some form. Is that correct?
A Yes.
Q Is it that you enter information into a data base and it shoots an e-mail back to you? How

does that work?
A Yeah, this is the safety reports, the JEMS reporting. JEMS, J-E-M-S.
Q What does JEMS stand for?
A I don't recall.
Q So would you basically type information into a data base and once you save that information, an e-mail is generated?
A Right. And they return it back to whoever it was under, whoever sent it, which in this case it would be me.
Q Okay.
And it also sends it to other individuals other than just yourself. Is that correct?
A That's correct.
Q Okay.
You see where it says Date of the Event, it says 1/21/2008 and underneath that it says Time of Event, 0653. Do you recall that being the time that the accident occurred?
A I guess so.
Q Okay.
A I don't recall the exact time. This was three years ago. I mean, if I wrote it there,

if it was written there, then approximately that's correct.
Q Well, do you see also up on the top, up next to the word From and next to that it says Sent and it says 1/21/2008 at 7:42 a.m.?
A That's correct.
Q This e-mail would only be generated at a time after you inputted the information. Is that correct?
A It goes into a system and they pretty much send it back out like you stated.
Q So the Sent part indicates that this e-mail was sent at or about 7:42 a.m. Is that correct?
A Yes, if it says Sent.
Q Okay.
A Then, yes, I guess that's the time it was sent at.
Q Okay.
Now, I'm going to go down to the description of the event.
Actually, just to make it easy, can you read the description of the event, please?
A You want me to read it?
Q Yes, since you inputted it or provided

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the information.
A It says, "Description of Event: I was assigned to zone 1 covering gates 1 through 7. I was asked by the Lead Benjamin Thomas to assist with his flight. Benjamin and I loaded the front of the aircraft. I was located on the right side of the belt loader (ground) and he was located on the left (baggage cart was staged between us while loading). A United aircraft powered in to their gate 10 across the field. I and Benjamin continued to load our aircraft. I heard a noise from behind me, turned around and seen baggage cart 1056 and an Allied Fueler stairs coming straight towards me. I held out my arms to protect myself from being pinned against the belt loader and the GSE from coming into contact with the aircraft and the baggage cart and stairs pushed me back but I was able to stop both pieces of equipment. I then notified Operations of the incident and then notified our GSE department of faulty brakes on the baggage cart. Benjamin and I both noticed the safety tong was in the correct position (locked) but the baggage cart continued to move. He then inspected the cart after the incident (pushing it by hand with the tong in the up position) and the

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baggage cart brakes were not working. The Allied stairs were not in the locked position at the time of the event."
Q Okay. Thank you.
About six or seven lines down there's a reference to GSE, capital G, capital S, capital E. Could you tell me what that is?
A Ground service equipment.
Q The third line down it says, "A United A/C," which I believe you said means aircraft, "powered in to their gate 10 across the field."
Does reviewing this document refresh your recollection as to where the United aircraft was powered -- which gate the United aircraft was powered into?
A Into their gate 10.
Q Correct.
A Yes.
Q So now is that -- does that refresh your recollection as you sit here today as to which gate they were pulling into?
A Well, if that's what it states there, yes.
Q You provided all of the information in the description of the event. Correct?

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A Yes, I provided that information.
Q And this was provided shortly after the accident occurred. Correct?
A I believe so, yes.
Q You indicated halfway down, approximately halfway down, "I held out my arms to protect myself from being pinned against the belt loader and the GSE from coming into contact with the aircraft and the baggage cart and stairs pushed me back."
You indicated earlier that the baggage cart didn't come in contact with you. Does this refresh your recollection as to whether or not the baggage cart did or did not push you back?
A No, it was the stairs that pushed me back.
Q Okay.
A I put out my arms and they came in contact with the stairs. It was in motion.
Q Right. It says here, "the baggage cart and stairs pushed me back" so I'm asking did the baggage cart push you back as indicated in defendant's exhibit E?
A If it's stating that both pieces of equipment pushed me back, what I can recall from

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and what I seen and what was actually hit my body was the stairs.
Q Okay.
You also indicated, "I was able to stop both pieces of equipment."
How did you stop the baggage cart?
A Alls I remember is the stairs hitting me, me putting out my arms and I was thrown back a couple of feet. I would assume it was a couple feet. It was a couple steps. And everything just came to a halt.
I seen the stairs in front of me. Then there was a white baggage cart behind it, a white Jet Blue baggage cart behind it.
Q When the fueler stairs first hit the baggage cart, did the baggage cart move at that time or was the baggage cart in motion already?
A When we were jet-blasted, they were in motion. It was in motion. The stairs hit the baggage cart, spun around and they came and hit me.
Q You indicated earlier that the baggage cart was further away from you -- I'm sorry, was closer to you than the stairs. Right?
A Right.
Q Before the jet blast.

A Right.
Q So then the stairs hits the baggage cart.
A Um-hum.
Q And then it spins around?
A Yeah, it spun around. I don't recall how it was actually facing 'cause there's a back part and then there's a stairs. It's like a triangle. And I remember it spinning around but, like I said, I don't remember how it was staged prior to that, like which direction the stairs were actually put. I just remember it spinning around and it came right at me.
Q Now, the last portion of your statement says, "The Allied stairs were not in the locked position at the time of the event."
Is that the information that you received from Mr. Thomas, the last sentence?
A Yes.
They wouldn't move if they were were in the locked position. But I'm just assuming.
MR. GORMLEY: I'm going to mark this as defendant's exhibit F.
(Crewmember Incident Statement is marked DF for Identification.)

Q Actually, before we go to this, the Ramp Irregularity Report, after Author, four lines down there's an Aircraft N Number, the letter N capitalized.
A Yes.
Q And then next to that it says N267JB. Correct?
A That's correct.
Q Is that the aircraft number for the Jet Blue aircraft that you were catering?
A Yes.
Q I'm sorry, not catering. Uploading, rather.
A Yes.
Q And Flight Number 25, that's the flight number for the aircraft that you were uploading, as well. Correct?
A That's correct.
Q So those numbers don't have anything to do with the United aircraft. Correct?
A Those do not.
Q Okay.
I'm going to show you what's been marked as defendant's exhibit F for Identification. Take a look at that and let me

know when you're done.
(The witness refers to DF for Identification.)
A Okay.
Q All right.
Defendant's exhibit F, have you seen that document before?
A Yes.
Q And what is that document?
A This is a Crewmember Incident Statement.
Q Okay.
And was this statement -- whose name appears next to the word Name?
A Benjamin G. Thomas.
Q And to your knowledge, is this a Crewmember Incident Report prepared by Mr. Thomas?
A Yes.
Q And was this prepared on the date of the accident?
A Yes.
Q And was this the incident statement that you referred to earlier when you were typing in the information into your Ramp Irregularity Report?

You indicated that Mr. Thomas was preparing a statement. Is this the document that he was preparing?
A This is what Benjamin prepared.
Q Okay.
I'm going to read the statement. I'm not going to have you read it because it's not yours. I don't want you to read something that's yours. I don't want you to read something that's not yours but I'll read it and ask you if I read it incorrectly.
It reads as follows. There's a section that says, "Describe in your own words and in as much detail as possible what you know about the incident. Include names of others present. Use reverse side to draw diagram of the mishap scene including all equipment, aircraft, et cetera, if applicable."
And underneath that there's some handwriting. Is that correct?
A That's correct.
Q Okay.
And do you know if the handwriting is Mr. Thomas's handwriting himself?
A Yes.
Q And it reads as follows, and after I'll

ask you to tell me if I read it correctly or not.
"On this day supervisor Frank Gatto was assisting me upload flight 25 (FLL) on gate 4. During the upload the wind (blowing steadily) blew baggage cart number 1056 into the fueler stairs, then both pieces of equipment began moving toward Mr. Gatto at a rapid pace. Mr. Gatto's attention was drawn to the noise and movement and was able to stop the equipment from smashing into himself, myself or the plane. Upon" -- which looks like I believe it's the word upon -- "further examination by myself I was able to physically push cart by hand, while brake was set with minimum effort. GSE was notified."
Underneath that it has Print Name and then the words Benjamin G. Thomas and then a signature line and what at least appears to, and I'm not going to ask you to confirm one way or another whether that is Mr. Thomas's signature. But actually do you know if that is Mr. Thomas's signature?
A This is the report that he handed in.
Q Okay. Do you know if that's his signature? I mean, if you know. If you don't know --

A If I was to see it today and had to compare signatures, I couldn't tell you.
Q That's exactly what I wanted to know.
Approximately five lines down he indicates in his statement that the wind blew the baggage cart into the fueler stairs. But you indicated that the fueler stairs hit the baggage cart.
Does that refresh your recollection as to how the accident occurred?
A Yes.
Q Okay.
So it was the baggage cart that hit the fueler stairs?
A No, I didn't say that.
Q I'm asking you he says that in his statement.
A Well, he was in the middle of the baggage cart with his back turned toward it.
Q Okay.
So where did he get the information that the baggage cart number 1056 was blown into the fueler stairs?
A I don't know.
Q Okay. Is he incorrect in that

statement?
A I don't know.
Q Well, based on what you observed that day, is that statement incorrect, that the baggage cart came into the fueler stairs as opposed to the fueler stairs coming into contact with the baggage cart?
A No, the fueler stairs came into the baggage cart.
Q Okay.
So when Mr. Thomas says that the baggage cart was blown into the fueler stairs in his statement, is he incorrect?
A I guess he would be.
Q Okay.
Anywhere in this statement does Mr. Thomas make any reference to the brakes on the fueler stairs?
A I'm sorry, say that again.
Q Anywhere in this statement did Mr. Thomas make any reference to the brakes on the fueler stairs?
A I don't see anything on this that says anything about the fueler stairs.
Q And anywhere in this statement did

Mr. Thomas make any reference to jet blast?
A That's not the wording he used, no.
Q Okay.
What word did he use?
A It looks like "blowing steadily."
Q And what two words are before that?
A "The wind."
Q Anywhere in this statement did Mr. Thomas make any reference to a United aircraft?
A No.
Q From the time of the accident up to the present time have you had any conversations with anyone from Allied Aviation in connection with this accident?
A No.
Q Do you know if anyone else on your behalf, whether it be a co-employee or somebody else, spoke with Allied with respect to this accident?
A Anyone else?
Q Yes, that you know of. You know, whether it be someone you worked with, a friend, spoke with Allied Aviation regarding this accident?
A Would that include my lawyer?
Q That would include your lawyer.

A I'm not aware if he spoke with Allied yet.
Q Are you aware of any photographs that have been ever taken of the fueler stairs that were involved in your accident?
A No, I'm not.
Q Are you aware of any photographs that were taken of the baggage cart that was in or about the area of your accident?
A No.
Q Are you aware of any photographs depicting the layout of where your accident occurred?
A No, I'm not.
Q I don't mean anything I showed you today. I just meant that you yourself were in possession of.
A Okay. I understand.
MR. GORMLEY: Do you want to question on liability?
MR. MORYAN: Yes.
MR. GORMLEY: Okay.

CROSS-EXAMINATION BY MR. MORYAN:
Q Mr. Gatto, my name is Jeff Moryan from

Connell Foley. I represent United Airlines. I have some questions.
I apologize in advance for two things: one, if I go over anything that's already been asked. I don't mean to unduly keep you here or be repetitive. It's just that I'm a little unclear of your testimony.
And I apologize in advance if I ask you a question which either you don't understand or doesn't sound right because sometimes lawyers talk like nobody else in the world and we do a lot of double and triple negatives, so if you at any point in time do not understand one of my questions, please do not answer. Tell me you don't understand and I'll try to rephrase it in such a way that you do understand it. Okay?
A Okay.
Q I'm going to try to go back in reverse chronological order because it might make some sense but you indicated that you or somebody on your behalf had a telephone call with a Rob in Operations and why was that phone call made?
A To report the United powering into the gate. They're not supposed to power into the gate. And it was also to report what happened.

Q Okay.
And what position did Rob -- I know you don't know his last name but what position did Rob hold?
A He was our Operations supervisor, I believe.
Q Operations supervisor?
A Yes.
Q Do you know -- and did Rob ask you to fill out any forms?
A No, Rob did not.
Q And do you know is that an official title, Operations supervisor?
A Yes.
Q Okay.
Who, if you know, reported to Rob directly?
A I believe it was me or Benjamin.
Q Okay. About this particular incident. Right?
A Yes.
Q Now, do you know if Rob or someone on his behalf contacted United Airlines?
A He stated he was going to call United and notify them.

Q Do you know if he did that?
A No.
Q At any time -- I believe you testified earlier that you last worked for Jet Blue in or about July 13, 2008?
A Yes.
Q Okay.
So from January 28, 2008 till July 13, 2008 did you ever go to Operations or Operations supervisor Rob and ask him if he made the phone call to United Airlines?
A Yes, I believe I spoke to him. I don't recall the date that it was. It could have been anywheres from one day to a couple of days later. I asked him if he called. He says, "Yes, I called" but it was pretty much left at that. He said he spoke to somebody but I didn't take down no additional names or nothing. He said he did notify them, though.
Q What documentation or paperwork was generated as a result of Rob's phone call?
A Nothing was generated. That was all verbal from Rob and myself and I'm assuming Benjamin, as well.
Q Now, you just indicated that the -- let

me step back a second.
Do you know the tail number of the United airlines plane that was involved?
A No, I didn't know. I don't think I wrote it down in here or if they wrote it down in here or not.
Q Okay.
Do you know whether or not anybody -- any -- whether it was Mr. Thomas or any other Jet Blue ground crew that was on the tarmac on that day went over to any United ground crew and made any statements to them as a result of your incident?
A No.
Q Do you know if anybody went to the flight crew and made any comments to the flight crew about your incident?
A You're asking if anybody physically went over there?
Q Correct.
A No.
Q Now, earlier you testified that there was about forty or fifty Jet Blue ground people out in this area because you said do you want the names of the forty or fifty people on the tarmac when counsel was asking questions.

Who else was on the tarmac besides you and Ben Thomas that morning?
A Well, it would be the entire crew that was scheduled to work that day. I'd say about a good fifty percent of them, maybe more, sixty percent were probably out on the field at that time.
Q Okay.
And who was in the general area of zone 1 other than you and Mr. Thomas?
A The other names I couldn't recall off the top of my head.
Q Who were the two gentleman that were in the aircraft taking the baggage from you and Mr. Thomas?
A That I don't recall that either.
Q Do you remember -- now, you were at least a supervisor of some of these people. They reported to you. Correct?
A That's correct.
Q All right.
Can you just generally speaking give me the names of the people that were reporting to you in January 2008?
A Not right now I could not do that.

Q Other than Ben Thomas do you know the names of anybody that was reporting to you?
A In general?
Q In January 2008.
A It changed. Like if we employed a thousand crew members or five hundred crew members, they would rotate shifts and change shifts, so I could have anybody, anyone of that whole manifest of people that we employed. It could be anybody. Sometimes you don't work with the same people every day.
Q Okay.
What record would there be, what would it be called, that would identify who was working in zone 1 on January 28, 2008?
A It would be a crew roster is what they would call it.
Q And do you know -- who keeps control of the crew rosters once they're written up and recorded for the day?
A That would be the MPC office which is manpower coordinator.
Q And is that out of J.F.K.?
A Yes.
Q Okay. And do you know who the

recordkeeper of the MPC office was, the recordkeeper?
A It could have been a gentleman named -- man. I can give you a couple of names. I don't know which one was the manpower coordinator for that day, though.
Q Okay.
A I could give you a couple names.
Q Sure.
A Jamel Addison. It could have been Trevor Diederville. There's another one, female, Tesha Perkins. There was about four or five other people --
Q Okay.
A -- that worked there. They were different shifts and, again, they rotated and you would only touch base with them rarely.
Q Now, you indicated earlier that the -- and I apologize for jumping around -- but you indicated earlier that the baggage cart weighed about 1700 or 1800 pounds. Correct?
A That's an approximate, yes.
Q Was that with or without baggage?
A Without.
Q Okay.

And the baggage cart that was involved in this incident was empty?
A Yes.
Q Do you know how heavy fueler stairs are? Do you know how much weight, how much they weigh?
A Well, judging by the -- that we have moved them before --
Q Yes.
A I'd say a few hundred pounds.
Q Okay.
A It could even be -- it could be actually even more than that.
Q Okay.
And if I understand your testimony -- well, strike that.
At the time of this incident you were in the Ground Operations department?
A That's correct.
Q Okay.
And did the Ground Operations department have a manual?
A Yes.
Q And did it cover all ground operations including the uploading of aircraft?

A Yes.
Q Did it also include safety precautions to be taken for uploading of aircraft?
A Yes.
Q Did it include -- did it have a section on what steps ground crew were to take prior to uploading an aircraft to assure itself that all equipment nearby was secured, locked and brakes were operating?
A I tell you the truth, I don't remember. It's been long since I -- we only used to refresh every so often.
Q The area where you were at, that's called a ramp?
A Yes.
Q And you had worked in different capacities on the ramp for approximately six to seven years before this accident occurred?
A (No response.)
Q 2001 to 2008 roughly?
A Well, I was shifted around.
Q But you were on ramps.
A Right.
Q You were on ground duty. You were on ground operations.

A Correct.
Q And I take it that you had worked out on the ramp loading -- uploading and unloading baggage in different weather conditions over the years.
A That's correct.
Q Rain?
A Yes.
Q Cold?
A Yes.
Q Hot heat?
A Yes.
Q Windy, not windy?
A Yes.
Q Okay. In your personal opinion how windy would it have to be to be called blowing steadily?
A I don't -- have no idea.
Q Well, have you -- okay.
Well, you said earlier that your memory was that it was not windy on the morning that you were injured. How high would the winds have to be for you to say they were windy?
A That could be anything. I mean, it could be from a small gust of wind up until, I

would assume like a tornado.
Windy is -- I don't know. That's not my wording so I don't know what windy for him would be like that.
Q What would windy for you be, five miles an hour?
A I guess breezy. That would be breezy to me.
Q Okay. What would ten miles an hour be to you?
A I don't know. I don't know what ten-miles-an-hour winds feel like.
Q Do you know what fifteen-miles-an-hour winds feel like?
A No.
Q How about wind gusts of twenty miles an hour, do you know what that feels like?
A No.
Q You also indicated in earlier questioning that you said it was not cold by any means. What temperature would it have to be Fahrenheit for you to say that it was cold out out on the ramp?
A Well, it was in January. I mean, it was cold but not like freezing cold, like --

MR. MASCOLO: Today?
A Yeah, like today at all, by any means. It wasn't cold like that. I mean, I'm a warm-blooded person. I didn't feel that it was cold like that out.
Q Okay.
So 32 freezing, would that be cold for you as a ground operations person?
A 32?
Q Yes. Freezing.
A It's cold but.
Q Okay.
How about ten degrees below that, 22, would that be cold?
A Yeah, that's cold.
Q How about in the teens?
A Teens is cold, also.
Q Okay.
Do you know who Michael Costelano is?
A Michael Costelano?
Q Correct.
A No.
Q You do not. All right.
Do you know if you talked to a Michael Costelano on the day in question to report this

incident?
A I don't recall a Michael Costelano.
MR. MORYAN: Okay. Unfortunately, I don't have multiple copies of this and I have highlighting, but that's okay.
Would you mark that as the next exhibit, please?
(State of New York, Workers' Compensation Board, Employee's Claim For Compensation is marked DG for Identification.)
Q Mr. Gatto, I'm going to show you what's been marked as DG for Identification. It's a Workers' Compensation Board Employee's Claim For Compensation. I want you to take a look at that and let me know when you're done, please.
(The witness refers to DG for Identification.)
A Okay.
Q I hope you don't mind, I'm going to stand behind you since it's my only copy.
Is that your signature at the bottom next to the X?
A Yes.
Q Okay.
And is it your handwriting?

A No.
Q Okay.
Do you know who filled this form out for you?
A No, I don't know.
MR. MORYAN: Okay. Now, it's actually, counsel, it's C-3 on the bottom.
MR. GORMLEY: Okay.
Q Do you -- you retained a law firm to handle the workers' comp. claim for you. Correct?
A Right.
Q And it's a different law firm than the law firm that has this lawsuit. Correct?
A Yes.
Q Do you recall being in the office of your workers' compensation claim law firm and having this form filled out at which time you signed it?
A Yeah, I probably was, yes.
Q Okay.
And do you know -- and under H. Notice there is a -- there's two questions. "1. Have you given your employer notice of this -- of injury?" And you have it marked off, checked Yes. Correct?
A Right.

Q And then it says, "If yes, notice was given orally." Correct? It's checked off orally? Right here.
A Yes.
Q "On 1/21/08 to Michael Costelano." C, it looks like o-s-t-e-l-a-n-o.
A Yeah. I don't know that name.
Q You do not know that name.
A No. The one I reported to was Esposito.
Q Okay. Now, under category D. The Injury, question 2 said, "Did anyone witness the injury?" And there are two blocks, Yes and No. "If yes, give the names." Neither Yes nor No are checked, nor are there any names.
Can you tell me why you did not give notice to the Workers' Compensation Board as the -- and your employer that there were witnesses to the accident on this form?
A They have -- I gave -- all these papers that you provided me with, the crewmember's statement, the Ramp Irregularity Report, they have all that information.
Q Okay.
Do you know why, though, you didn't put

down the witness's name on this form?
A No, I don't recall why.
Q Okay. Now, in -- okay.
Now, earlier, Mr. Gatto, you said that the United Airlines plane was not supposed to power into its gate. How do you know that?
A 'Cause planes -- United planes are usually towed into that particular gate to avoid jet-blasting any crew members that are on the opposite side directly across from the gate.
Q Now, how do you know that? And are you aware if there is a regulation in place at J.F.K. Airport that precludes --
A I never physically seen anything in writing.
Q Okay.
Do you know whether -- and that would be from any source? You never saw anything from Port Authority of New York and New Jersey. Right?
A I never seen anything in writing.
Q Okay.
Did you ever see anything in writing from Jet Blue that stated that United Airlines was prohibited from powering into any of its gates?
A No.

Q And I take it you never saw any United Airline document that prohibited powering into any of its gates.
A I'm not privy to any United Airline documents.
Q Okay. So tell me, then, what forms the basis for your statement that they are not -- strike that.
Tell me, then, what forms the basis for your statement today that United Airlines was not supposed to power into a gate?
A Verbal conversations amongst Operations and crew members. There was prior incidents there of crew members complaining of jet-blasting, so supposedly our Operations met with United at some point in time and let them know the safety concerns and Corporate Safety also I believe was notified and they were supposed to be towed into the gates.
Q When did your Corporate Safety or your Operations people meet with the United Operations people?
A I couldn't give you a date. I wasn't involved in that whole conversation. It was just people talking in a conversation.
Q Okay. I understand that. I'm going to

get to that in a little bit.
But in terms of, let's try to put it -- date it in relation to your hire. Was it before or after 2001?
A It was after 2001.
Q And how many years following 2001, approximately, did this conversation take place?
A I don't know. Anywheres from 2006 to 2008.
Q Okay.
So it was -- so would I be correct to say that the conversation between Jet Blue Operations people and United Operations people about the effects of jet blasts of aircrafts powering into gates occurred closer to your accident than to your initial hire?
A I'm sorry, say that again.
Q Yes. It was bad and long.
The conversation that you heard took place between Jet Blue and United occurred within a year or two before your accident, would you say?
A Approximately a year. I would say about a year.
Q About a year?
Okay. So that would put it sometime in

200 -- late '6 --
A '7.
Q 2007?
A Yeah.
Q And do you know was it ever identified to you as to who at Jet Blue talked to United?
A No.
Q But your understanding it was somebody from Operations?
A From our Operations, when they used to have I believe it was like a monthly meeting or something with the managers or supervisors. They used to have meetings with other terminal airlines and stuff, so they used to -- they met and supposedly that was an issue that came up.
Q Okay. So certainly by the time -- strike that.
And as -- and who gave you the information, if you can recall, that during these monthly meetings the possible effects of jet wash from powering into a gate was brought up and discussed and some agreement had been arrived?
A You're asking the time or who?
Q I'm asking you who told you those conversations actually took place?

A It was just hearsay, so I don't -- nothing was official that I was aware of.
Q Got it.
Who, if you recall, did you have conversations with that gave you the unofficial hearsay that these conversations took place?
A I believe it was fellow supervisors and possibly a couple crew members that might have known some of the other management.
Q Okay.
And the fellow supervisors would have been whom by name?
A Off the top of my head I don't recall.
Q Okay.
How about the fellow supervisors that you identified earlier, would any of them have had a conversation with you about it?
A Which supervisors did I mention?
Q Now you're going to make me go all the way through these things.
MR. GORMLEY: Mike Esposito and there was two others.
A That's the manager, Mike Esposito. He could have been involved in that conversation. It's a possibility.

Q I'll try to find it when I pass you back to counsel.
So if these -- if any conversations did take place in 2007, then the concern had been existing for as far as you would know for at least seven years or so, six or seven years from the date you were hired.
A I'm sorry, it's been a concern for how long?
Q Since the day you were hired.
A Not that I'm aware of. I didn't say it was since 2001.
Q Okay.
How long -- when did Jet Blue first start handling aircraft in the zone and gate that you were in on the day of the accident?
A I don't recall.
Q Was it after you were first hired?
A Was it after I was hired?
Q Yes.
A Yes.
Q Okay.
And so for how many years?
A I don't recall.
Q You don't recall?

A (The witness shakes his head.)
Q Would you say from the time you came back and took the supervisor's job when your mom was sick were you in that location?
A In what location? In the zone area?
Q Yes.
A No, I wasn't there.
Q Was Jet Blue operating there?
A In that particular gate I don't know 'cause there was a lot of renovations going on. I can't give you times and dates and specifics of what gates were being renovated. I don't recall. I'd be lying if I tell you something that I don't.
Q All right.
So for how many years were you in Ground Operations in the terminal that you guys were in on the day of the accident?
A How many years was I?
Q How many years were you in Ground Operations at that terminal?
A Six years.
Q And was the Jet Blue location in a different part of the terminal than it was on January 28, 2008?
A What do you mean by that?

Q Were the planes coming into a different area of the terminal?
A In what time frame? When?
Q In the entire six years.
A Yeah. They were coming in, I told you they got the T-way, the TWA terminal. Planes were coming in from over there and then we also had our old terminal which is Terminal 6 and they, like I said, they were renovating gates. They were moving gates around and renaming stuff. They were expanding.
Q Okay.
But you were -- on the day of the accident you were at Terminal 6.
A Yes.
Q Zone 1 of Terminal 6.
A Yes.
Q Now, I understand that the term zone 1 may have been changed and been renamed and everything but the actual gate that you were at, for how long had Jet Blue had airplanes come in and out of that gate during the six years you were there?
A Probably the whole time.
Q Okay.

And for how long had you heard that Jet Blue was concerned about the effects of jet blasts from United airplanes across the way?
A Approximately about a year from when my incident happened.
Q That was the first time you heard about it?
A Approximately.
Q Okay.
And do you know on how many occasions there had been some jet blasts before Jet Blue employees talked to United employees about it?
A I'm not sure.
Q More than once?
A I'm not sure.
Q Was there anything in the Jet Blue manual, the Ground Operations manual, that gave you as a Jet Blue Ground Ops employee any guidance on how to protect yourself against the effects of jet blasts from an airplane that came into a gate?
A Not nothing like that, no. There was mention of jet blasts.
Q And what was in the manual about jet blasts?
A I couldn't recall word for word what it

would say about jet blasts.
Q Do you have a general memory of what it said?
A It gave approximations of where you should be standing in the rear of the aircraft, maybe not to be directly behind the engines when engines start. Basics like that. I don't recall anything else as far as specifics. I'm sure there is in the manual but I don't recall it.
Q Do you recall what the Ground Operations manual instructed about how to secure your ground-handling equipment in the event of a potential jet blast?
A It just mentioned to always, you know, make sure equipment is secured and in the upright and locked positions. Pretty much that was it.
Q Okay.
What did it tell you to do with respect to insuring that nearby equipment of other vendors was secure?
A It didn't say anything about other vendors. Other vendors, they have to be liable for their own equipment if they're gonna leave it in our area. We're not trained on other people's equipment 'cause we're not allowed to touch it.

Q So if you saw on the day in question that the fueler stairs were not in a properly-stowed position, you would not be allowed to touch it? That's what you're telling me?
A Well, there's nothing that's actually written to saying that you can't touch equipment if it needs to be moved, but if you had to move it, you would move it, but me personally I couldn't move it. I don't touch other people's equipment 'cause I don't know how to operate. I wasn't trained on that. You would have to -- I'm sorry.
Q Go ahead.
A You would just have to call whoever owned it and place the call to pretty much Operations. Operations had all the numbers. They dispatch it out and whoever owned that piece of equipment would have to move it from your area.
Q Would I be correct in, based on what you've testified here today and your statement -- well, strike that.
Based on what you've testified here today, would I be correct that as of January 28th, 2008 United powering in -- not being towed into its gate was an unusual occurrence?
A Well, the majority of the planes

powered in. It's just how much power they use. Like I forget exactly what -- how much 'cause I'm not a pilot, so I don't know, but you would know when a plane, even one of our planes, if they were using excessive throttle, it would start kicking up dirt and debris or FOD if there was any on the ramp.
Q Okay. So let me just see if I understand this.
It was not unusual as of January 28th, 2008 to see a plane, whether it be a Jet Blue plane or United plane, power into a gate in this area. Correct?
A All planes power into the gate, the majority of them, unless they're an excessively large plane and they can't power into the gate because their engines are too large and there's too many aircrafts or Ground Operations people in the department 'cause we share the tarmac with them.
Q Okay. Understood.
So in your -- is that why in your Ramp Irregularity Report you wrote that the "United A/C powered in to their gate across the field and I and Benjamin continued to load our aircraft"?
I assume you continued to load your

aircraft because the mere fact that a plane was coming in under its own power was not an unusual event.
A Right.
Q That's why you took your attention away from the aircraft and you went back to uploading the -- your aircraft. Correct?
A That's correct.
Q Do you know, by the way, where did you get the N number for your Ramp Irregularity Report?
A Where did I get it?
Q Yes.
A I believe it was looked up after the incident occurred what aircraft number that was. 'Cause you knew every aircraft number that came into the gate. It was on a gate sheet and you would know every number that came in. You would know the numbers of the aircraft that were assigned to that gate that would supposedly be pulling into the gates.
Q Okay.
So would you have looked it up on a sheet to put it down here on your Ramp Irregularity Report?
A I don't recall if I looked it up or if

I got it from maybe the gate sheet that Benjamin had and, you know, you see what gate number or what aircraft number is it. I mean, it's not hard information to find out or to put into the system.
Q And the sheet that we marked for identification, there's one next to your counsel there, it's N as in Nancy 267 J as in John B as in boy?
A Yes.
Q All right.
And to your knowledge and the best information you have that was the N number of the plane you were uploading.
A Yes.
Q Now, what -- tell me the reason why you filled out a Ramp Irregularity Report and Mr. Thomas filled out a Crewmember Incident Statement.
A 'Cause whoever the incident -- well, I was a supervisor so a Ramp Irregularity Report was procedure. I used to fill them out for other crew members, as well. So a Ramp Irregularity Report was -- it's part of the procedure and then you would get crew member witness or statements if there was anybody around in the area. If not, then

they would just write a report.
Like if somebody fell off a belt loader, they'd have to write at some point or another, even if they broke their arm, we'll have somebody write it for them and with a supervisor being a witness or a statement. You'd need some type of statement submitted to Safety and the management so they'd be aware of what happened.
Q Now, did -- were any other crew members requested to fill out a Crewmember Incident Statement?
A Of this incident?
Q Correct.
A No.
Q Were the two gentlemen -- well, I shouldn't say gentlemen. Were the two employees who were in the aircraft that you were handing the uploaded baggage to asked to do a Crewmember Incident Statement?
A No.
Q Did you fill out a Crewmember Incident Statement?
A No, I think we just did the Ramp Irregularity Report.
Q Okay.

Do you know which was filled out first, the Crewmember Incident Statement of Mr. Thomas or your Ramp Irregularity Report?
A I don't know the time. I don't know the time that Benjamin filled it out, if that's what you're asking.
Q So you don't know whose came first.
A No.
Q Okay. And what action, if any, was taken by Jet Blue with respect to the reporting in either the Ramp Irregularity Report or the Crewmember Incident Report? Incident Statement, sorry.
A I don't know. I couldn't answer that.
Q What action, if any, was taken by your GSE department regarding the faulty brakes of the baggage cart 1056?
A I don't know. I didn't follow up with them either.
Q What was the reason for that?
A That's not my job to follow up on the safety report. I wasn't Safety. I was just a Ground Ops supervisor at the time.
Q Well, do you know whether or not baggage cart 1056 was taken out of service after

January 21, 2008 for any period of time?
A I'm not aware of that.
Q How long were you out of work because of this incident?
A Well, from -- when I went to J.F.K. medical, I believe I was only out for a few days.
Q Yes.
A But I went back to work but not to full duty. I was like light duty. The managers were kind enough to let me maybe do some work behind the desk, some filing. You know, I was able to walk around outside for a little while.
Q Right.
A But they were still working on me, going for therapy and waiting on approval for X rays and MRIs.
Q Right.
A So that's what I was waiting for.
Q So when you came back and you were doing your light duty, I'm assuming at some point you came back to full duty. Correct?
A Yes.
Q Okay.
And we'll get into that in a little bit but when you came back initially after a few days

and you were on light duty, what did you do to see whether or not baggage cart 1056 had been examined and/or repaired by the GSE department?
A Nothing. That wasn't my follow-up.
Q Whose follow-up would that have been?
A That would be somebody from Safety.
Q And did you have any discussions with anybody at Safety about baggage cart 1056?
A No, I did not.
Q Did you have any -- whose follow-up would it have been at Jet Blue to interact with anyone at Allied to discuss whether the fueling stairs had malfunctioned?
MR. GORMLEY: Just note my objection to the form.
You can answer.
A Who -- you're asking who from Jet Blue would speak to somebody from Allied?
Q Yes.
A It would most likely be a manager or general manager.
Q Do you know if that occurred?
A No, I don't.
Q As a result of the examination either by you or Mr. Thomas or both, was there not a

conclusion drawn -- strike that.
As a result of an examination of the fueler stairs by either you or Mr. Thomas or both, was there a conclusion drawn as to whether or not the stairs had been properly stowed and/or locked?
A They wouldn't have moved if they were locked. They wouldn't just glide and hit another piece of equipment like that. They had wheels on it.
Q Okay. So -- and what about the baggage cart 1056? If the brakes had not been faulty on that baggage cart, if the brakes had operated correctly, I take it that baggage cart would not have moved?
MR. MASCOLO: Objection to form.
You can answer if you know.
A You said if the brakes worked on the baggage cart would it have moved?
Q Correct.
A Anything could move even if it has brakes on it.
Q Okay.
But didn't -- as a result of either the examination by you, Mr. Thomas or both, the conclusion was that the baggage cart had moved

because the brakes were faulty. Right?
A That's what Benjamin stated.
Q Okay.
So my question is, it is certainly possible, is it not, that had the baggage cart brakes not been faulty, it would not have moved on that morning. Correct?
A I couldn't tell you that 'cause I've seen baggage carts move even with the brakes.
Q So what's the purpose of the brakes, then?
A It's to hold the cart into place or to just gently press on the wheels to not make it -- if it's like on a slope or something like that, you would normally just push up the tong and it would put down these two pieces of metal that would just hold it there.
Q Okay.
A It wasn't used for like a brake when you stop a car. It was not like that, if that's what you're thinking.
Q But these things were rolling, were they not, on their wheels, both pieces of equipment?
A Yes.

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Q Before your incident?
A Um-hum.
Q Did you ever tell anybody that the jet blast was so violent that it actually broke the fueler stairs or the baggage cart into pieces and you were hit by pieces of metal?
A No, I never said that.
Q Okay.
So if that's in a document or a report somewhere as being stated by you, that would be incorrect.
A If I stated that --
Q No, no, no, if somebody wrote down that you said that to them, that would be an incorrect statement.
A That the jet blast was so fierce that it --
Q That it broke one or more of these pieces of equipment into pieces and you were hit by pieces of metal.
A Yeah, that would be. It's incorrect.
Q Okay.
And you actually were able after taking a couple steps back to stop both of these pieces of equipment, right, from keep moving?

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A Yes. When they hit me, I put up my arms and they collided into me. I went back a few feet and then --
Q The movement stopped.
A Right.
Q Okay.
Were there any other documents or any other reporting for an incident like this that Jet Blue had that were not filled out? Were there any safety reports that could have been filled out?
A Just -- no. It's the Ramp Irregularity, a Crewmember Statement.
Q What about did GSE have a form that could be filled out for a piece of equipment that malfunctioned?
A Yeah, sure, they got forms. If -- it's like a slip, I believe. I don't know if they changed the procedure now.
Q Back then.
A It was like a slip of paper that would be submitted if there was a damaged piece of equipment somewhere.
Q And did you fill that out?
A No.
Q Okay.

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You said that in a way that's not part of what you would do?
A Anybody could fill that. You could tag out any item. Anybody could do that. You don't have to be trained or anything like that. If a piece of equipment doesn't work, you tag it out. That's normal.
Q Did you tag out baggage cart 1056?
A I wasn't aware that there was anything wrong with it.
Q Did you tag it out after the incident?
A No, I did not.
Q Did Mr. Thomas tag it out?
A I don't know.
Q Okay.
Did anybody else that was on the tarmac that morning tag it out?
A Not that I'm aware of.
Q Do you know whether or not there were any GSE personnel on the tarmac that morning?
A There's always GSE personnel on the tarmac.
Q Do you know who was there on January 28th, 2008?
A No, I don't.

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Q Would there be a crew roster, a GSE crew roster, for January 28th, 2008 that we would know about?
A To be honest with you, I don't know how they run their department.
Q Okay.
Now, earlier you used the term or you answered a question that included the term wing man. What's a wing man?
A Wing man is somebody who guides in or backs out an aircraft. They're usually the crew member that stands there with the wands and it's for either pilot or co-pilot to see, make sure he doesn't clip any wings on another aircraft or hit a piece of equipment.
Q Okay.
And to your knowledge do wing men also give some information to the crew as to how fast to move the aircraft on ground?
A How fast to move it?
Q Yes.
A No.
Q Okay.
They just are directional?
A Yes.

Q Did you see any wing men for this United flight or this United aircraft that came in?
A When it came in, no.
Q Do you know whether or not this was actually an aircraft that had landed from a flight for United?
A I'm not aware of their schedules, their flight schedules.
Q Okay.
So you don't know where it was coming from, whether it was another part of the airport, a hangar, or it had just landed.
A No idea.
Q Have you had any conversations, Mr. Gatto, with anyone who identified him or herself as an expert on your behalf in this case?
A Yes.
Q And what's that person's name?
A I don't recall the name.
Q And was this an in-person conversation or a telephone conversation?
A I had a telephone conversation.
Q And how long ago?
A I'm not sure. I don't even know a time frame.

Q Well, today is --
A Maybe a couple of months. That's --
Q Before Christmas?
A Yes.
Q Okay. Before Thanksgiving?
A I don't remember.
Q All right.
And how long was the conversation?
A I tell you the truth, I don't know. It was a long conversation, though.
Q And you don't remember the person's name.
A Not off the top of my head I don't.
Q Do you remember the name of the outfit or organization that he or she worked for?
A No, I don't.
Q Was it a male or female?
A It was a male.
Q And what did you talk about?
A They asked me, you know, exactly what happened, pretty much where I was standing. A lot of questions that you guys asked, as well.
Q In the same amount of detail?
A Not that much detail.
Q Have you ever met with that person or

another expert in person?
A No, I don't recall meeting with them.
Q Did you go out to the airport with this person?
A No, I did not.
Q Did you look at any maps or photographs of the airport with this person?
A No.
Q Other than generally asking you what happened, what else did -- what else were you asked?
A Well, they were asking me my location. I had to pretty much paint them a visual picture of it, where I was standing at the time of the incident, how the incident occurred, who was there, reports that were filed, the extent of my injuries.
What else do you want to know?
Q Everything they asked you.
A I don't remember everything. Just if I had surgery due to the injury.
Q Okay.
A I guess they asked a few of my doctors' names.
Q Okay.

A I don't recall.
Q And who did you tell them was there? You said one of the things they said, who was there?
A Yes, I told him Benjamin Thomas.
Q Just Mr. Thomas?
A Yes.
Q And other than -- were there any other reports or documents that you identified for them in addition to the Ramp Irregularity Report and Crewmember Incident Report? Incident Statement, I'm sorry.
A Were there additional documents?
Q Yes, that you identified for them.
A For who?
Q For the gentleman on the phone.
A I don't recall.
Q Getting back very briefly to the Ground Operations manual that we talked about a little earlier, what procedures and protocols were in that manual for windy uploading conditions?
A I don't recall at this point.
Q Do you recall if there were any?
A I'm sure there was.
Q Okay.

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Were you also given a safety manual at all, a separate document called a safety manual?
A No, I don't recall.
Q And as a supervisor did you have a different manual than just the Ground Operations department manual that was given, I'm assuming, to all Ground Operations employees?
A Well, all the procedure manuals are the same. They're given to everybody. Procedure manuals, everybody has procedures in the airline. Some airlines are different.
As far as a supervisor manual, it's different. It doesn't go with their safety procedures. It's just training you on it's called like caring for the crew members and stuff like that. Like, you know, listening to what crew members had to say, if they had issues and stuff like that. It was just managerial.
Q I'm just looking at some notes. Excuse me for a minute.
Do you have any idea how much power the United crew applied to this plane?
A No, I don't.
Q Was there any FOD whipped up in the area as a result of the crew powering up?

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A No.
Q Okay.
Did you see any other pieces of equipment besides the two that were involved in your incident that were blown around?
A Not that I recall.
Q Did anybody tell you that they had seen any others?
A No.
Q Okay.
Do you know whether or not the United aircraft proceeded down the yellow line about which you talked about earlier as to where they're supposed to, you know, the directional line that they're supposed to follow?
A I wasn't watching where their nosegear was.
Q Okay.
In fact, you just noticed them out of the corner of your eye, saw it pause and then you went back to doing your baggage handling.
A I could see it all happening as I'm loading bags.
Q Out of the corner of your eye.
A Um-hum.

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Q But you continued to do your uploading.
A Correct.
MR. MORYAN: Okay. All right.
Why don't you -- I'm going to pass you back. We're going to ask you some questions about your damages.
I think I'm done. I just want to -- I want to reserve but I don't want to hold you here while I'm looking through my notes.
MR. GORMLEY: You want to just take five minutes?
MR. MORYAN: It's okay with me.
(There is a discussion off the record.)
(There is a recess.)
BY MR. MORYAN:
Q Mr. Gatto, let me just ask you a couple of quick cleanup questions and then I'll be done for you, at least temporarily.
Do you know whether or not Jet Blue had any restrictions on its aircraft powering into the gate 6? I'm sorry, the Terminal 6 area.
A No, I don't.
Q I'm sorry?
A No, I don't.

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Q Okay.
And did you or Mr. Thomas do -- strike that.
What were the requirements based on Jet Blue procedure on either you or Mr. Thomas on determining whether baggage cart 1056 was properly braked and stowed before you started your work?
A Say that again.
Q What were the requirements under Jet Blue procedures on either you or Mr. Thomas to insure that the baggage cart 1056 was properly braked and stowed before you began your work at gate 2?
A As long as the safety tongs are up, brakes, you don't have to inspect them.
Q Okay.
And did you and/or Mr. Thomas physically -- make a point to physically observe the tong being up before you began your work?
A It was visually saw, yes.
Q And that was required of you under Jet Blue procedure to insure that the tong was up?
A I don't recall.
Q What would be the purpose of looking to see if the tong was up?

A I did that for myself. I know it's locked.
Q Because you wanted to make sure it was locked because it was going to be near you. Right? And you didn't want --
A For whatever reason. I just make sure equipment's locked.
Q Okay.
And was there a procedure and a requirement under Jet Blue procedure that you and/ or Mr. Thomas insure that the Allied equipment was properly braked and stowed?
A I don't recall.
Q But you didn't do it because you don't touch other people's equipment on the day in question. Correct?
A Yeah, I don't know how to operate it.
Q And please don't read anything into the question but you didn't do it because since you don't know how to operate it, you wouldn't have touched the equipment anyway.
A No.
Q No meaning correct?
A No, I wouldn't have touched it.
MR. MORYAN: Okay. All right.

Okay. Please.
MR. GORMLEY: Sure.

REDIRECT EXAMINATION BY MR. GORMLEY:

Q When you sat here earlier you told us as to how you do lock the Allied wheels. Correct?
A Yes.
Q So as you sit here today you know how to lock those wheels.
Did you know back in January of 2008 whether or not -- I'm sorry, the manner in which to lock those wheels?
A I stated on how they lock. I didn't say I knew how to lock them.
Q Okay.
Did you perform any inspection whatsoever with respect to whether or not those wheels were locked prior to uploading that aircraft on that day?
A No, I did not.
Q Okay.
MR. MORYAN: While he's doing that I have a couple more before we move on to damages. I apologize.

RECROSS-EXAMINATION BY MR. MORYAN:
Q Do you know who placed baggage cart 1056 in the position it was placed in?
A No, I do not.
Q And you said it was ten feet away from you?
A I said approximately.
Q Was it uncommon for an empty baggage cart to be placed up against the terminal wall that close to where you were working?
A No, it was not.
Q Okay.
So that would be commonplace, then, for it to be that close to you.
A It's a ramp. Baggage carts are everywhere.
Q How many baggage carts were there out on the ramp that morning?
A I can't tell you. I don't know.
MR. MORYAN: Okay. All right.
MR. GORMLEY: Is that it?
MR. MORYAN: Yes.
MR. GORMLEY: Okay.

REDIRECT EXAMINATION BY MR. GORMLEY:

Q Now we're going to, at least I'm going to turn to damages and ask you about the treatment you got and things like that.
You indicated that shortly after the accident you went to Medport. What doctor did you see at Medport, if any?
A I don't recall the names of those doctors.
Q How did you get to Medport?
A I was driven.
Q By whom?
A Mike Esposito.
Q Did Mr. Esposito stay with you when you were at Medport?
A I don't recall.
Q How long were you at Medport for that day?
A Not long. I don't recall. It was maybe about an hour, approximately.
Q And what complaints, if any, did you make to the doctor or doctors at Medport?
A I explained to them what happened, how I braced myself, and then they asked me what was

hurting. I told them my neck and my back were hurting a little bit. I said my knee was hurting and I told them that my shoulder was hurting.
They did some X rays but I don't recall a hundred percent of what they did immediately at Medport.
Q What part of your back was hurting?
A It was from the neck down to the tailbone, the bottom of the spine.
Q So pretty much from top to bottom?
A Yes.
Q What about your knee, left or right or both?
A It was the right knee.
Q And what about your shoulder, left or right or both?
A Well, I braced myself and it was both shoulders that were hurting but it was mainly the left.
Q Did any portion of the fueler stairs or baggage cart come in contact with your left shoulder?
A The stairs.
Q They actually struck your shoulder.
A Struck my hands.

Q Okay. That's what I'm asking about. Forget about your hands for a second. Your shoulder.
A No.
Q Did the doctors at Medport tell you the results of the X rays?
A All they told me was, "You have no broken bones."
Q Did they provide you with any treatment of any kind?
A They wanted me to come for therapy, which I did a few times, and I believe they gave me some type of prescription. I don't recall what they gave me at the time, the name of the prescription.
Q Was it a painkiller?
A No, it wasn't. It was similar -- I told them I don't take drugs so I didn't want anything like a narcotic or anything like that. I told them if they have something to.
They said, "You're gonna be throbbing tonight from the impact and everything, it's gonna hit you later on," so they gave me something I guess to reduce any type of swelling and I guess it was a partial of painkiller.

Q Okay. And did you take that medication?
A I believe I did.
Q Okay.
And other than prescribing you medication and examining you, did they do anything else for you on the day of the accident?
A I believe they took X rays.
Q I apologize. I meant inclusive of the X rays in part of examining you. Did they do anything else for you?
A No.
Q When for the next time after that did you first see a doctor in connection with the injuries you sustained in this accident?
A I was going back there a couple of times for checkups and for some therapy and they were giving me back therapy and some heat and I think they gave me some stim at one point. Then that was it from there.
Q Initially after the accident did you primarily treat at Medport?
A No.
Q Did you go to another doctor shortly after your accident other than the doctors at

Medport?
A I'm not sure of the time frame but being that their therapy wasn't working and I wasn't satisfied with it 'cause I couldn't do what I was used to doing, I seeked my own doctors.
Q Okay.
How long after the accident did you do that?
A I stated I didn't know. I'm not a hundred percent sure.
Q Well, was it a month, a week, a --
A I couldn't tell you time frame.
Q Approximately how many times did you go for physical -- was that physical therapy you mentioned earlier?
A At Medport?
Q At Medport, yes.
A I believe I was going two, three times a week.
Q And for what period of time?
A It had to be for well over a month.
Q How long were you out of work after the accident?
A I was only out for maybe a few days to a week.

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Q I think you indicated earlier that you returned to work initially on light duty. Correct?
A Yes.
Q And for what period of time did you work on light duty?
A I was pretty much the supervisor so I stood on light duty. I just reported to my manager and he asked me, "Are you able to lift bags and stuff yet?"
I said, "No, not yet."
So it was quite some time. It was pretty much as I seen fit and as the doctors told me as I went along. Once I started getting stronger in physical therapy, then I would try things at the job.
Q Okay.
At any time between the time of your accident and to the time you left Jet Blue in or about July of 2008 were you able to return to full-duty status? In other words, do the same jobs that you did before.
A It's stated in the records, I think they returned me to full duty at some point. I don't recall when, though.
Q Okay.

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And full duty meant things such as handling bags.
A Lifting, bending, stretching. But they gave me limitations, as well, how many hours I could do that for and it wasn't like a rush thing, like putting me back to full duty. It was full duty with limitations.
Q Right.
I guess the question I have is this: Is there any time you returned to full duty no limitations while still employed by Jet Blue?
A Yes, I think so.
Q Okay.
And is there any way you could approximate when that occurred?
Your accident's in January and you leave the job in July, so within that time frame would you be able to tell us when you returned full duty no limits?
A Probably in February, end of February.
Q Now, you indicated that at some point in time you no longer treated at J.F.K.'s Medport and that you went to your own doctors. Who was the first doctor you saw other than Medport in connection, obviously, with the injuries?

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Just so you know I don't have to say it all the time, obviously, we're going to deal with the injuries we're talking about in the lawsuit. I'm not looking for other doctors or specialists other than what's related to this accident and this injury.
A I tell you the truth, I don't know what order I went to them in but I could just give you the names. I don't know in what order.
Q Okay. Go ahead.
A I had the chiropractor, Dennis Hupka.
Q Do you know how to spell his last name?
A H-u-p-k-a, I think.
Q Do you know if he's affiliated with any facility, hospital or otherwise?
A No, it's just a family care chiropractic place.
Q Is that Colonia Family Wellness?
A Yes, that's it.
Q Okay.
Who else did you see?
A I had an orthopedist. His name was Dr. Wilen.
Q Is he connected with any facility or is it his own private office?

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A It's his private office.
Q Anyone else?
A Dr. Naik is for pain management.
Q Do you know how to spell Naik?
A N-a-i-k.
Q Anyone else that you recall?
A I did go back to another chiropractor named Steve Keenan at one point and I also went to another place called One On One Physical Therapy.
Those are pretty much all the places I've gone to, I think.
Q Do you recall treating with a Dr. Andrew Davy, D-a-v-y?
A I think it was only a couple visits. It wasn't -- I didn't officially -- he wasn't my official doctor.
Q Was he a second opinion or something else?
A He was also a pain management doctor.
Q Was Dr. Keenan affiliated with any facility, hospital or otherwise?
A No, he's private, as well.
Q Where was he located?
A Fort Hamilton. 86th Street and like 14th Avenue.

Q Did you treat with a Dr. Lopez Del Castillo?
A Dr. Lopez.
Q A.N. Lopez Del Castillo.
A I might have at one point. There was quite a few doctors I went to that.
Q Okay.
Do you remember when you first saw Dr. Wilen?
A I think it was not too long after -- no, I don't, actually. I don't remember the date that I saw him.
Q Okay.
A He's been my doctor for -- since this happened almost, basically.
Q Do you currently still see Dr. Wilen?
A Dr. Wilen?
Q Yes, Dr. Wilen.
A Yes.
Q When was the last time you saw him?
A Last month.
Q What did he do for you last month?
A I think I got a cortisone shot in my shoulder.
Q Do you want to take a break?

A No, I can't sit for a long time, anyway. I have to keep moving.
Q That's what I'm saying. You want to get up and walk around for five minutes?
A No, I just want to finish. I just want to finish.
Q Okay.
At some point in time did you have shoulder surgery?
A Yes, I did.
Q What surgery did you undergo?
A Sorry?
Q Well, what surgery did you undergo? What were you told you were undergoing surgery for?
A When the MRIs came back, I had right knee surgery. Then I had left shoulder surgery.
Q Who advised you you required left -- I'm sorry, right knee surgery?
A Who told me I needed it?
Q Yes.
A It was Dr. Wilen.
Q Who performed it?
A Dr. Wilen.
Q Where did he perform it?
A I don't recall the hospital I went to.

Q Was it New York Community Hospital?
A That could have been it.
Q When did you undergo right knee surgery?
A I don't recall the date.
Q Was it in or about July of 2009?
A It could be approximately right.
Q That's more to give you a time frame.
A I'm just trying to remember 'cause it took over a year to fight for the MRIs to see what was wrong with me why I was in pain. Then they came back and I found out why. So, yeah, the surgeries came not too far after the MRIs came back.
Q And what were you told as to why you needed right knee surgery?
A It was a torn meniscus in the knee.
Q When you were injured in the accident did you twist your knee at all?
A Not that I can recall.
Q But I think you said that the fueler stairs made contact with your knee. Is that correct?
A That's what I said.
Q Okay. Just making sure.

When did you undergo left shoulder surgery?
A It was after the knee surgery. It was a couple months after that, not even.
Q Was it about a year ago, January of 2010? Does that sound right?
A Tell you the truth, I don't know.
Q Up until the time that you had right knee surgery what treatment were you receiving for your knee, if any?
A Physical therapy.
Q What did that physical therapy consist of?
A Bending the knee, heat, electrotherapy, stim.
Q When you say stim, you mean electrical stimulation?
A Yes.
That's pretty much what I can recall.
Q And did you receive physical therapy at all the physical therapy places you went to for your knee as opposed to a different part of your body?
A What do you mean?
Q Okay.

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You went to physical therapy at various places. Correct?
A Well, at J.F.K. Medport and One On One.
Q And One On One.
Did you do physical therapy anywhere else?
A That I can recall, no.
Q Okay.
When you were doing physical therapy at J.F.K. Medport did they treat your knee?
A I believe they did.
Q And when you went to One On One Physical Therapy, did you receive treatment for your knee?
A Yes.
Q How often would you go to One On One Physical Therapy?
A I was going three times a week.
Q And for what period of time did you go three times a week?
A It had to be for over a year.
Q And after that, you -- and that's all before your surgery. Correct?
A This is before, during and after.
Q Okay.

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At any period of time did you go less than three times a week to One On One Physical Therapy?
A There was sometimes where I did go less than three times a week due to treatments being nonverified through insurance companies.
Q In other words, the workmen's compensation carrier didn't provide authorization for certain treatment at certain times. Is that correct?
A That's correct.
Q When you went for physical therapy, would you receive physical therapy for certain parts of your body at certain times or did you receive physical therapy for all the parts at the same time?
A I wasn't allowed to do that. It was only -- they can only treat you certain -- you can't do -- if your neck and your back hurt, you can't do your neck and your back and your knee and your shoulder. You can't. It has to be one thing. That's how they have to do it. That's how the insurance carrier wants it.
If you're gonna go in there one day and you say, "What hurts today?"

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"My knee is killing me."
"Okay, let's treat the knee today."
Q Okay, just so I'm clear. I think I got that.
On any given day that you'd go to physical therapy they'd only focus on one body part but you could go two days later and they'd focus on a different body part. Is that correct?
A Basing on a scale of 1 to 10 which hurts the most, that's how you would do it.
Q Okay.
But what I'm basically saying is you can receive different treatment for different body parts on different days. Is that fair?
A That's correct.
Q Okay.
In other words, it wasn't -- you didn't have to just do your neck for six months and then your knee for six months and then your shoulder for six months.
A Well, after the surgery you had to do. It was just before the surgery and then after the surgery.
Q Okay.
A That's how they would do it, 'cause you

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had to get physical therapy done before and then a couple weeks after when you go back in for your first session after the surgery.
Q So before you had knee surgery was the physical therapy focused on your knee?
A No, I would alternate body parts.
Q Okay. But I'm saying just prior to your -- let me rephrase that.
Just prior to the time that you're going to go in for knee surgery, for your arthroscopic surgery on your knee, at that time did they just focus on your knee at physical therapy, just prior?
A Yeah, it was a couple sessions before I went in.
Q And then after your surgery was performed on your knee, did they focus primarily on your knee at physical therapy?
A Right. That's correct.
Q And the same occurred with your shoulder. Is that correct?
A That's correct.
Q How often would you see Dr. Hupka?
A I was going to him three times a week, as well.

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Q Was this at the same time you were going to physical therapy?
A No.
Q Okay.
Did you ever go to Dr. Hupka and physical therapy during the same time period or were they separate time periods?
A They were separate time periods.
Q Okay. Who did you go to first, Dr. Hupka or did you go to One On One Physical Therapy?
A I believe it was Hupka.
Q And what would Hupka do for you, Dr. Hupka?
A He would -- I would have back -- spinal adjustments and then also stretches as far as with the knee, the neck. Just like basic stretch exercises to, you know, loosen up the muscles and any tendons that needed to be stretched out.
Q Do you know from when to when you were seeing Dr. Hupka, approximately?
A I couldn't tell you.
Q And after Dr. Hupka, is that when you went to One On One?
A I believe so.

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Q And then after One On One did you go see Dr. Naik?
A Dr. Naik was after I seen Wilen. He came in later.
Q Okay.
When you saw Dr. Wilen, how often would you see Dr. Wilen back in 2008, 2009?
A I think I was going once every two to three weeks.
Q And what would Dr. Wilen do for you?
A Well, they would move my body parts, ask me how I'm feeling, you know, what hurts, does it still hurt in the same area, what hurts? Like basics.
Q Would it be fair to say that they examined you rather than gave you physical therapy?
A Dr. Wilen doesn't give physical therapy.
Q That's what I mean. These are all examinations.
A Yeah, it's an examination and occasionally I would get the cortisone shots.
Q Did you ever have a steroid injection, epidural injections, steroid injections?
A No.

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Q Other than than cortisone shots did you ever have any other types of shots?
A No.
Q Where were those cortisone shots administered?
A I had them in the knee, the shoulder. The right knee, left shoulder and I've also had them in the back.
Q Okay.
When you would go to Dr. Hupka for pain management, did he treat your back, as well?
A Yes.
Q Which part of your back?
A He did adjustments on the back.
Q Okay. That's right. I apologize.
What parts of your back would he do the adjustments for?
A It would be my entire back.
Q You mentioned Dr. Keenan. What type of doctor is Dr. Keenan?
A He's also a chiropractor.
Q When did you see Dr. Keenan?
A I don't recall.
Q And where does he fit in with the other doctors?

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A Well, I stopped going to Dennis Hupka and then I went to One On One and after One On One I wasn't -- they only approved so many visits and then we went back to court and I had to get more visits, so I couldn't go to both.
I wanted to go to both, chiro and physical therapy. They told me no. So I chose -- I found Dr. Keenan and that's when I started going back to chiro because my back was still hurting.
Q And how often did you see Dr. Keenan?
A I was seeing him three times a week.
Q And when you were treating with Dr. Hupka did your condition, symptoms, problems that you were having, did they improve, get better, get worse, remain the same, something else?
A I'd have on-and-off days from when my back. Some days I wasn't even able to get out of bed and other days I could walk around, I felt good.
Q Okay.
And what about when you were seeing Dr. -- actually, what about when you were going to One On One therapy?
A The same thing.
Q Over the course of all of this

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treatment have you found any improvement overall?
A No.
Q Have you found that your problems have gotten worse over time?
A I feel worse.
Q What feels worse?
A I'm very uncomfortable all the time. My back always bothers me. My knee and my shoulder still hurt.
Q What part of your back bothers you at the present time?
A It's from the neck and the shoulders and then in the center. It's the center of the back that hurts the most. And I get pains occasionally at the bottom of the back that radiate down to past my -- to my legs.
Q At the present time are there any days in which your back does not bother you?
A No.
Q At the present time do you have -- do you continue to have pain in your shoulders and your knees?
A Yes.
Q Is that pain brought on by certain activities or does it happen when you're just

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sitting here or something else?
A I can be just from sitting a long period of time, standing a long period of time. If I lay in bed my arms get numb. I have to keep moving all night. I can't lift anything like I used to.
Q How often do you have that pain in your lower back that radiates to your legs?
A I get that occasionally.
Q When you say occasionally, can you be more specific?
A Maybe once a month.
Q At some point in time you underwent, I think you said, left shoulder surgery?
A Yes.
Q What did that surgery consist of?
A It was my rotary cuff. Torn rotator cuff is what they called it.
Q And since your surgery has your -- shortly after your surgery did your shoulder improve in any way?
A No.
Q What about after your knee surgery, did your knee improve at any time?
A No.

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Q Do you recall when you were seeing Dr. Davy?
A Yes, I recall.
Q When was that?
A I don't recall the date. I recall seeing him.
Q You recall seeing him. Can you tell me when approximately you saw him, month, year, season?
A Maybe '09, '10. '09 it had to have been.
Q And what did he do for you?
A He was pain management. He tried to give me prescriptions and I don't take that. I don't do that.
Q Who referred you to Dr. Davy?
A Nobody.
Q Did Dr. Wilen refer you to any doctors?
A No.
One On One Physical Therapy. I don't know if you consider that. That's not a doctor. That's physical therapy.
Q Okay.
Other than referring you to One On One Physical Therapy, did Dr. Wilen refer you to anyone

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else?
A I started going to Dr. Naik who's affiliated with him. But as far as a written referral, I don't recall any.
Q Where is Dr. Hupka's offices?
A Colonia Road in New Jersey. I'm not sure of the exact address.
Q And the town is good enough. Is it Colonia?
A Colonia.
Q What about Dr. Wilen, where was his office located?
A I was going to the Staten Island office on Third Street and Highland Boulevard, I believe it was. And then I started going to the Brooklyn location on 99th and Fort Hamilton Parkway.
Q Was there any reason you switched from the Staten Island location to the Brooklyn location?
A Change of address.
Q His change of address.
A My change of address.
Q Oh, fair enough.
And what about Dr. Naik, where did you treat with Dr. Naik?

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A The same thing as Wilen. He was in Staten Island for a period of time and then when I moved they were in Bay Ridge, Brooklyn.
Q Okay.
You indicated that Dr. Keenan, he was in Brooklyn, as well?
A That's correct.
Q Did you start treating with Dr. Keenan when you moved to Brooklyn or were you treating with him while you lived in New Jersey?
A I don't recall if I was in the process of doing all that.
Q What about One On One Physical Therapy, where are they located?
A They're on -- they're also on Third Street and Highland Boulevard.
Q Staten Island?
A Yes.
Q And Dr. Davy?
A I don't remember his address. It's been a while since I've been there.
Q Do you have any idea where he was?
A No, I don't.
Q New York, New Jersey?
A Oh, he's in New York.

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Q Brooklyn?
A I think he had an address somewhere in Flatbush, Flatbush Avenue, I think. I'm not a hundred percent sure.
Q Flatbush Avenue in Brooklyn.
A Yeah.
Q Okay.
And you don't remember treating with a Dr. Lopez Del Castillo on Wieland Boulevard in Staten Island?
A I went one time, I think, to that guy.
Q That's fine.
A He's the one that wanted to give me epidural and I told him no. I didn't want to do that.
Q Why did you not want to get epidurals?
A I don't like needles in my spine. I didn't want that. If that's the same guy. I think that's him. The address sounds familiar.
Q All right.
Let's go to the present time. Who do you currently have doctors' appointments with scheduled as you sit here today?
A Dr. Wilen and Dr. Naik.
Q Anyone else?

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A Besides IME doctors?
Q Yes, I'm not worried about IME doctors.
A Okay. Then that's it.
Q Okay.
How often do you see Dr. Wilen at the present time?
A Once a month.
Q And how many times do you -- how often do you see Dr. Naik?
A Once a month.
Q Do you see them at the same visit, so to speak, one after the other, or do you go different times?
A No, never. Different times.
Q When you last saw Dr. Wilen did you discuss your problems with him, future?
A My future?
Q Yes, future medical care, future prognosis for getting better.
A No. We have discussions on how am I feeling, you know, what still hurts. You know, he asks what does hurt, if anything does hurt, where am I feeling the pain. Then he gives me advice on what to try to do.

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Q Well, when you saw him for the last time what advice did he give you?
A Well, the last time I saw him I got the shot in the shoulder 'cause I was in a lot of pain. So, you know, he asked me, "Do you want the cortisone shot?"
I said, "Yeah, I think I'll do it" 'cause he knows I don't like needles but I did it anyway and it hasn't helped me, so I haven't seen him since that last visit, so I'm waiting to see him now and I'll follow up.
Q Have you ever discussed any other forms of treatment with Dr. Wilen other than cortisone shots and, obviously, the surgery you've had?
A No.
Q Okay. I apologize.
A Physical therapy, like.
Q I apologize. The cortisone shot was for your shoulder or your knee?
A Well, I've gotten them all.
Q The last one.
A The last one I got was in the left shoulder.
Q Did that provide any relief at all?
A For about two days.

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Q Can you describe the pain that you experience or the discomfort you experience in your left shoulder?
A It's a stabbing, numbing pain, consistent. It does not go away. It radiates from the shoulder to the neck, from the shoulder down.
Q Down to where?
A Down the shoulder.
Q Oh, down the shoulder.
A Yeah. I'm sorry.
Q That's okay.
All right. Do you have that pain consistently each day?
A Yes.
Q Do you ever take any prescription medication?
A Yes.
Q Okay.
Do you take any -- in the last twelve months have you taken prescription pain medication for the pain in your shoulder, knee, back or neck?
A Not prescription, no. I haven't -- I don't recall filling any prescriptions, no.
Q Okay.
Do you take any other type of

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medication?
A Aspirins.
Q Okay.
How often do you take aspirin?
A It depends on the day. I try to do without 'cause I don't like pills. So sometimes I'll take Aleves or Advils on bad days so I can get moving.
Q Has Dr. Wilen provided you with -- I don't know if I got an answer to this before -- a prognosis as to what the future holds for your left shoulder? Will it get better? Should you do more physical therapy?
A He hasn't told me anything yet. He's -- he hasn't said anything about, like, final diagnosis, if that's what you're asking.
Q Yes, that's what I'm asking.
A No, he hasn't said anything yet.
Q When Dr. Wilen performed your shoulder surgery, when he did that did he speak to you about what the prognosis was at that time, before you underwent the surgery?
A Before I went underneath the surgery?
Q Yes.
A No, he just told me about the repairs

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that he was gonna do, what he was gonna do, how long that it would take, and then the recovery time, approximate recovery time.
Q And what did he tell you for the approximate recovery time?
A I tell you the truth, I don't recall, because he didn't give me -- that's why I said approximate because everybody heals different, from what he said. He goes, "You can be up and running in a couple of months or you could be a couple years. It depends on how the surgery goes."
Q As you sit here today could you tell me about the pain you have in your right knee?
A In the right knee it's constant pain in the front of the knee and on the top right of the knee above it, like right above the knee, and it shoots up and down the leg, and constant clicking, cracking, and occasional buckle and fold.
Q I don't want to put words in your mouth. Did you say occasional buckle and fold?
A Yeah, my knee will buckle.
Q Okay.
How often does your knee buckle?
A Occasionally would be, I don't know, I'd say like once a month, sometimes once every

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three weeks, depending on, I guess, the activity from walking or the weather.
Q The pain that you described, does that ever improve with physical therapy, get worse with physical therapy, something else?
A Does it improve?
Q Yes.
A No, it hasn't.
Q But does it improve while you're undergoing physical therapy?
A While I'm actually doing physical therapy?
Q Yes.
A No.
Q Has Dr. Wilen or any other doctor provided you with a prognosis for the condition of your knee?
A No.
Q Has any doctor told you that you're going to require any future surgery?
A Nobody's mentioned that.
Q Are you receiving any treatment at the current time with respect to your back?
A I'm still seeing Dr. Keenan, Steve Keenan. I haven't gone lately, though. He has

called me but I haven't gone.
Q Why haven't you gone?
A I had a death in the family.
Q My condolences.
A Thank you.
Q Are you planning on making an appointment in the future?
A Yes.
Q How's your back been in the last six months?
A A lot of throbbing. Constant I have to stretch every morning lightly because I don't want to go too far but I do light stretches in the morning everytime when I get out of bed. It just gets very stiff like all day.
Q Other than your neck, your back, your right knee and your left shoulder, did you injure any other part of your body in connection with this accident?
A I believe it was my right wrist but there was no -- I never really treated it.
Q Do you have any current problems with your right wrist?
A No. It just clicks.
Q Did it click before the accident?

A No.
Q Is your range of motion, that is, your ability to move it around, is that compromised in any way since the accident?
A Well, I haven't gone back to work, really, like to do --
Q I'm just talking about your wrist.
A Just to move it?
Q Yes.
A I don't think it has, no.
Q Any other part of your body that you injured in connection with this accident that we haven't spoken about, your neck, back, knee, shoulder and right wrist?
A It was both shoulders, I believe.
Q Both shoulders.
A Um-hum.
Q Okay.
A No, that was it.
Q That was it.
Are you right-handed or left-handed?
A As far as doing what? 'Cause I kind of like I use both depending on what it is. I write with my right hand. I throw with my left. I catch with my right. I bat lefty. You know what I

mean?
I mean, that's why I'm saying. Some people say ambidextrous but I can't write with both hands so I don't consider myself. You know what I mean? I use both.
Q What would you say is your dominant hand for doing things like manual labor? You're loading baggages on a flight, are you using your right hand or your left hand?
A I probably use my left with my reach. I would reach and like that, throw.
Q Okay.
You indicated you're not presently employed. Is that correct?
A That's correct.
Q And the last time you worked was when?
A Was July. It was on July 14 of '08.
Q And who were you employed with at that time?
A Jet Blue.
Q Did you ever work for UPS?
A For, like, two days.
Q Okay.
And that was after Jet Blue.
A Yes.

Q Okay.
Let's start with Jet Blue. What was the reason you left the employ of Jet Blue?
A I left there due to personal reasons.
Q Are these personal reasons personal reasons that have nothing to do with the job or is it personal reasons that have something to do with the job?
A Personal reasons that have things to do with the job.
Q Okay. Could you tell me what those are?
A No. They're personal.
Q Well, you're asserting a loss of earnings claim so we're entitled to ask you questions as to why you left the employ of Jet Blue.
A Why did I leave Jet Blue?
Q Yes. Assuming you left, of course, and I'm not implying otherwise, but assuming you left on your own free will as opposed to being terminated or fired.
A Right.
Q You're asserting a loss of earnings claim and you left one job to go to another so

we're entitled to inquire.
A No, I didn't leave to go there. I loved that company. I worked there almost eight years.
Q Let me put it this way: You left one job and started another. Maybe you didn't leave one to start the other. We're entitled to. Unless your counsel has some -- if you want to talk about it off the record.
MR. MASCOLO: What period of time are we talking about here?
MR. GORMLEY: We're talking about when he left Jet Blue.
MR. MASCOLO: You can answer.
MR. GORMLEY: He's going to tell us why he left Jet Blue or why he no longer works for Jet Blue.
A I left Jet Blue because I had a discrimination with another manager there. He stated something about my race.
Q I'm not going to get into this whole thing because I agree that is personal. I just wanted to make sure I understand.
A I understand.
Q He didn't accuse you. You're saying

that he was discriminating against you as opposed to you being the one that was doing the discriminating. Is that correct?
A That's correct. He discriminated against me.
Q Okay.
Did he discriminate against you in any way with respect to any disability that you may have had or not had?
A No, it wasn't to do with my disability.
Q Okay.
Did it have anything to do with your injuries or your accident?
A No.
Q Did you leave the company or were you asked to leave the company?
A That all depends on how you want to look at it. I was pretty much forced. I had no choice because they were giving me five gates, six gates to run and three crews to run it and the flights all had to go out on time. So for my own health and before I would pretty much have a heart attack, yeah, I would want to leave.
Q Is it fair to say that certain people within the company increased your work load such

that you would be unable to complete your job functions?
A Well, they knew of my -- the extent of my injuries. They know I wasn't capable of handling an additional work load, like more than what I was required to do.
Q Did you file any discrimination suit charges against Jet Blue?
A Yes, I did.
Q Have those been resolved or are they still pending?
A Some of them are still pending from the last I heard of them. It's been a while, though.
Q Who was the manager?
A For what?
Q The manager with whom you've had this dispute.
A The dispute was Rob Howe. Robert Howe.
Q When you left Jet Blue did you go work for somebody else, even for a short period of time? Did you go work for UPS?
A Yes.
Q And what were the circumstances -- actually, withdrawn.

What job were you hired to work at UPS?
A I was hired as an off -- like a package handler.
Q And what were your duties and responsibilities? I know you were only there for a short period of time but what did that job entail?
A It was a part-time position and it was for a -- to off-load and throw boxes on belts and that was it.
Q And what were the circumstances under which you left the employ of UPS?
A I injured my back.
Q What were you doing at the time that you injured your back?
A Lifting boxes.
Q What part of your back did you injure?
A It's the same spot that I claim when I got hurt at Jet Blue. It was the center of the back.
Q At the time that you injured your back at UPS, had your back been bothering you before that?
A No, I felt okay enough to try to work. It wasn't a hundred percent.
Q Other than the center of your back did

you injure any other part of your back while working for UPS?
A No.
Q Did you have pain in any other different part of your back that you didn't injure while you were at UPS while you were working at UPS?
A No.
Q Since working at UPS -- actually, withdrawn.
How long did you work at UPS?
A I stated, a day or two.
Q Okay.
So it's fair to say you quit that job or ended working there because you were injured?
A Because I -- did I quit -- because, yes, I got hurt. I couldn't handle that position.
Q Did you file a workers' compensation claim in connection with that accident?
A No.
Q Since working for UPS for one to two days have you worked anywhere else?
A No.
Q Have you sought out or looked for employment in any other capacity?

A Sought out?
Q Sought out other employment since working for UPS?
A No.
Q Has any doctor told you that you should not return to work since you injured yourself at UPS and, obviously, your accident at Jet Blue?
A Well, right now I'm disabled.
Dr. Wilen is -- I'm disabled 'cause I can't go back to a hundred percent doing what I was doing.
Q Okay.
Has Dr. Wilen told you that you couldn't work in any capacity in any job?
A Pretty much right now, yes, totally disabled.
Q When you left Jet Blue how much were you earning?
A Approximately 60,000 a year.
Q Did that consist of just straight time, overtime, something else?
A Straight salary.
Q Did you work any overtime?
A I worked it but I wasn't paid for it.
Q That's what I meant. Were you compensated if you worked overtime?

A No.
Q And for what period of time were you earning 60,000 per year?
A Since -- for approximately more than two years.
Q So approximately give or take two years before the accident you were earning $60,000.
A Yeah, about that.
Q What benefits did you have working for Jet Blue?
A As far as?
Q Medical, dental, flight benefits, anything you're claiming in this lawsuit.
A Well, I had flight benefits. I have -- I had medical. I had a 401(k). I had stock options. I had death and dismemberment. If I was to die or lose a limb, my child would or me would get some type of check depending on what limb you lose.
Pretty much that's it.
Q And when you were employed by UPS, how much were you earning there? I know it was only for a couple days.
A I know. I think it was like eight dollars an hour.

Q Did you have any fringe benefits?
A Nothing.
Q Had you not had that, as you've described it, personal issue at Jet Blue, was it your plan to stay in the employ of Jet Blue?
A Sure.
Q And at the time just before you left Jet Blue were you able to perform the duties and responsibilities of the jobs that you had been able to perform before?
I understand they increased your work load. I'm not talking about that, with respect to those personal issues that you had, but were you able to fulfill the regular duties and responsibilities that you had of the jobs that you held at the time of the accident at the time that you left?
A Was I able to do what I used to do is what you're asking me?
Q Yes.
A After the accident?
Q At the time that you left were you able to fulfill your duties and responsibilities as a Ground Operations supervisor?
A I don't understand how you're wording

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it. You got to say it differently.
Q No problem. I certainly don't want to confuse you.
When you left your job in July of 2008 from Jet Blue, at that time were you able to do the job functions required of you at Jet Blue?
A Not to my full capacity since I was injured, no.
Q Okay.
Did anyone threaten to fire you, lay you off or anything else at Jet Blue as a result of the injuries that you had had?
A No. I was a supervisor. I pretty much could kind of work around. You know, if I couldn't get in the plane to load the plane because my knee was hurting or my back was hurting that day, I would try to get another crew member to assist the crew.
Q That's sort of what I meant.
A Right.
Q You might not have been physically able to do the job functions yourself but as a supervisor you could get somebody else to do it. Is that fair?
A Yes. Part of that was directing crew

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members on what to do. So, you know, ones that you seen sitting down doing nothing, you take them up and bring them to a flight to work.
Q Is it fair to say the only reason you left Jet Blue is because of this discrimination issue that you had, personal issue you had?
A Yes, it was the discrimination.
Q Since your accident have you received workers' compensation benefits?
A Yes.
Q Have you received at least a partial reimbursement of your salary of money that you were earning at the time of the accident from workers' comp.?
A Well, I get workers' comp. checks. I don't know if you're talking about like a lump sum or something.
Q I'm not talking about a lump sum. I'm talking about weekly or biweekly.
A Yes, I get a check every two weeks.
Q And how much is that check every two weeks?
A It was a thousand dollars every two weeks and now it's 1,600 a month.
Q So it's about 1,800. I'm sorry, 800

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every two weeks.
A Right.
Q Give or take. Okay.
I'm sorry, you said it was a thousand a week.
A It's 2,000 a month.
Q And now it's 1,600 a month.
A A month.
Q Have you had any out-of-pocket expenses that have not been reimbursed in connection with any medical treatment that you've received as a result of the accident?
A Probably just -- probably a couple months of gas and tolls and stuff like that, mileage for the people driving me back and forth to the doctor. But other than that, no.
Q Have you submitted certain expenses to workers' comp. for gas, tolls, bridges, mileage?
A Yes.
Q Okay.
And there's a couple of months you indicated you didn't. Correct?
A A couple of months that I haven't been reimbursed for.
Q Okay.

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And do you know how much money that is that you haven't been reimbursed?
A Not off the top of my head. It's been quite some time.
Q Could you provide an estimate? Is it a hundred dollars, a thousand dollars, $10,000?
A No, approximately two, $300.
Q Other than that amount have you -- are there any other out-of-pocket expenses that you've incurred as a result of this accident that haven't been reimbursed?
A No.
Q Other than receiving workers' compensation have you received any disability payments from anyone else?
A No.
Q Have you filed for Social Security disability?
A Yes.
Q Have you been approved for Social Security disability?
A No.
Q Have you been -- that was a bad question.
Have you been -- has a decision been

rendered with respect to your application for Social Security disability benefits?
A Neither.
Q In other words, did they reject you or you just haven't heard yet?
A From what I understand, I was approved. Then I was denied when it went to the final and then now it's pending.
Q When you say it's now pending, is that sort of an appeal or an appellate?
A My attorneys are handling that.
Q Okay.
Is that your attorneys here or your attorneys for the work -- that handle your workers' compensation claim?
A Neither.
Q That's a third attorney.
A Yes.
Q Who's that?
A Klee & Wolf.
Q I'm sorry, C?
A K. K-l-e-e and Wolf, W-o-l-f.
Q Okay. Where are they located?
A Massapequa.
Q Long Island.

A Yes.
MR. GORMLEY: We'll follow up in writing but we'll be requesting authorization for any and all Social Security disability records, applications, hearings or anything of that nature but we'll follow up in writing.
If you can do an index.
Also, any authorization for Dr. Steven Keenan. I don't believe we were previously afforded an authorization for Dr. Steven Keenan. Again, we'll follow up in writing.
Q Other than Social Security disability and workers' compensation have you filed for any other disability, whether it be private disability payments, private insurers, anything of that nature?
A No.
Q Prior to this accident of January 21, 2008 have you ever injured your knee?
A No.
Q Ever injured your back?
A No.
Q Ever injured your shoulder, either one?
A No.
Q Ever injured your wrist?

A No.
Q Since your accident -- actually, withdrawn.
When you worked at UPS and you injured your back as you testified to previously, did you injure any other part of your body?
A No.
Q Since your accident have you reinjured your shoulder?
A No.
Q Have you reinjured your knee?
A No.
Q Have you reinjured your back other than when you injured it at UPS?
A Have I reinjured it?
Q Reinjured it.
A No.
Q Have you been involved in any accidents since your accident of January 21, 2008 and your subsequent injury at UPS?
A No.
Q What activities are you currently unable to do now that you were able to do on a regular basis prior to your accident? What I mean by that, I'll break it down.

First let's talk about recreational activities. Is there any recreational activities you did before the accident on a regular basis?
A Played ball, Frisbee, football. Basically playing with my son.
Q When you said played ball, did you mean played basketball, baseball, football or are you limiting it?
A No, just played ball. You know, everything, just throwing around a football outside, you know, playing regular softball.
Q Did you belong to any leagues or teams that you would regularly play with on a regular basis back in -- before the accident?
A No.
Q How old is your son?
A He's five.
Q Any other recreational activities that you used to perform on a regular basis prior to your accident?
A No.
Q What about household activities? Were there any household activities you would perform on a regular basis prior to your accident?
A Laundry, cooking, cleaning.

Q And since your accident have you been able to perform any of those activities?
A No.
Q Who performs them at the present time for you?
A I have an aunt that helps me out. I have friends that come over and help me out.
Q Have you had to pay anyone out-of-pocket expenses to perform any household chores for you?
A No.
Q Any other household activities that you can't do?
A Cooking, cleaning.
No, none other.
Q Okay.
Are there any social activities that you're unable to do now that you would do prior to the accident?
A Kind of like going to games without being uncomfortable, you know, like a baseball game or something, movie theaters. I have to keep moving around a lot, fidgeting. As far as social goes. Long car rides, if I was gonna go somewhere, I can't do that really.

Q So if I understood you correctly, those social activities that you just described, it's not that you can't do them, it's that you're uncomfortable doing them at the present time. Is that correct?
A I would say I can't do them.
Q Have you been to any baseball games, football games in the past two seasons?
A No.
Q Have you been to see any movies?
A No.
Q Have you been on vacation since your accident?
A No.
Q Have you traveled out of the State of New York and/or New Jersey since your accident?
A No.
MR. GORMLEY: I'm going to look at my notes but rather than hold everybody up I'm going to let you.

RECROSS-EXAMINATION BY MR. MORYAN:

Q As with before I'm going to hit and miss certain topics. I'm not going to go into as

much detail as was just asked, Mr. Gatto. I do have some follow-up with respect to some of your testimony.
What was -- going back to your salary of $60,000 a year at the time you left Jet Blue, what was your take-home, your net pay?
A I don't know off the top of my head.
Q Well, what was -- well, were you paid -- how were you paid?
A It was approximately about 1,200 every two weeks.
Q Net or gross?
A Take-home.
Q Okay.
A And it was after 401(k) and whatever else I was putting my plans into, my money into.
Q Okay.
And at the time you lived in a condo. Correct?
A That's correct.
Q And what was your carrying charges on your condo?
A It was twenty-something hundred. I don't recall off the top of my head.
Q Twenty-something hundred a month?

A Yeah.
Q And I forget, the mother of your son, was she living with you at the time?
A Yes.
Q Were you married?
A Yes.
Q Okay. She does not go by Gatto. Correct?
A Yes, she does.
Q Oh, she did.
A Um-hum.
Q Oh, okay.
Was she working?
A Yes.
Q And did she contribute to the payment of the mortgage?
A Yes.
Q And how much did she make per year?
A I believe she was about forty-five, fifty.
Q Forty-five, fifty?
A Forty-five to 50,000.
Q Oh, okay. Doing what?
A She's a broker dealer for transition services at MetLife.

Q And do you recall what your utility charges were at the condo on a monthly basis roughly?
A Gas and electric, probably like, maybe like 150 to 200.
Q Did you have condo dues?
A Yes. They were 250 or 175 a month I think it was. I don't remember. I can't remember.
Q Did you have maintenance fee on top of that?
A That was included.
Q Okay.
And in terms of you personally, what did you spend your money on, if anything?
A I didn't. Stuff for the house and all for my son.
Q Okay.
And when did you move in with your dad?
A Approximately seven months ago.
Q And do you live in the same home with your father and your stepmother?
A It's a private home and I have an apartment there.
Q You have a separate entrance?
A Yes.

Q Okay.
And is there a reason why your aunt and friends come in to help you out as opposed to your dad and his wife?
A He helps, too.
Q He helps?
A He helps, yeah.
Q Your dad's name is?
A Anthony.
Q Anthony Gatto?
A Yes.
Q And what's your stepmother's name?
A I say he's my dad. He's my uncle but he raised me. I consider him my father. I'm sorry for that.
Q Okay. And that's Anthony.
A Yes.
Q And so his wife is the aunt you were talking about?
A Is my aunt. That's correct. Sorry about that.
Q What's her name?
A Her name is Marian.
Q And who are the friends that come in to help you out?

A Friends that I've had since high school.
Q Names, please.
A Anthony Hanley.
Q Anthony Handley?
A Hanley, H-a-n-l-e-y.
Q Hanley. Okay.
A His wife comes on occasion with him.
Q All right.
A Pretty much that's it.
Q Okay. And where does Anthony Hanley live?
A He lives in Sunset Park, Brooklyn.
Q And why did you move in with your dad approximately seven months ago?
A Separated from my wife.
Q And was any part of the reason for your separation -- I don't mean to pry but I will ask this -- related to the pain and/or injuries that you've sustained allegedly in this accident?
A I think that was partially the problem.
Q Okay.
Was there any other problems?
A That was partially the problem.
Q And I take it from your earlier

testimony that neither you nor your wife lived or lives in the apartment or the condo that we just talked about?
A That's correct.
Q Has that been sold?
A Not yet.
Q Okay. Are you in the process of divorcing?
A Yes.
Q And has a complaint been filed, a divorce complaint?
A Yes.
Q What county?
A In this county, Middlesex.
Q Middlesex County?
And did you file or was it a joint filing or did your wife file?
A I filed.
Q For grounds?
A No. Well, she wanted the divorce but never went and filed the papers but she decided she didn't want to be with me, so I had to get a lawyer and I had to file.
Q Okay.
A That's how it went.

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Q And who's your lawyer, your divorce lawyer?
A Lynn Miller.
Q And where is she located?
A Right here in this office. In this firm, I should say.
Q Is that your next meeting?
A Yeah. Well, then I have another meeting. I have to meet the ex-wife to give her a check, also, so.
Q Now, do you have visitation rights currently?
A Yes, I do.
Q And how often?
A Every other weekend, shared holidays, shared birthdays.
Q Shared meaning you alternate?
A Right, alternating.
Q And do you come out to New Jersey or does your son come over to Brooklyn to see you?
A She comes in once a month to pick him up, that's it. I have to be taken out here to come see my son, to pick him up.
Q So somebody drives you?
A Yes, I'll be driven.

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Q And that's because you can't physically drive?
A I could but not for long periods of time. Depending on the weather or how I feel that day.
I'm not saying I don't drive. I do drive. But certain days I have to have somebody take me.
Q Okay.
A So at least I could see him.
Q And when you come out do you spend the time out here or do you take him back to Brooklyn?
A I take him back to Brooklyn.
Q Okay.
Now, Robert Howe, is he African-American?
A Yes, he is.
Q And, again, I'm not going to get into a ton of detail about this but is part of your complaint about Mr. Howe's conduct that he treated African-American supervisors differently than he treated you?
A That was part of the complaint.
Q Okay.
And was the complaint filed in court or

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with the EEOC or some other entity?
A It was the EEOC.
Q And who is your discrimination lawyer?
A I had from EEOC -- oh, man, it's been a long time. I don't have that information right now.
Q Okay.
Did you go to a department or an office of the EEOC and lodge a complaint?
A Yes. I just don't recall the gentleman's name that assisted me with that.
Q Okay. Where was that office that you went to?
A It was in New York.
Q New York City?
A Yeah.
Q And do you remember what street that office was on?
A No, I don't.
Q Did somebody send you there? Did somebody recommend that you go there?
A Another person from the job stated I should go there to file the complaint because the actual Human Resources department who I filed with at the company wasn't assisting in any which way or

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form.
Q So you actually filed a formal complaint with the H.R. department?
A Yes, I did.
Q And was that in writing?
A I believe I shot out some e-mails to my general manager and he ignored it for a period of time. I then brought it over to Human Resource department, informed them, and they ignored it. So my last attempt to resolve the situation and not leave the company was with the EEOC.
Q Okay.
So you actually went to the EEOC before July 2008.
A Yes.
Q Who was your general manager that you sent your e-mails to?
A His name was -- oh, man.
Off the top of my head I don't. I don't know. I could get you the name. I don't remember off the top of my head.
Q Okay. Is this a general manager at J.F.K.?
A He's from Ground Operations.
Q Ground Operations general manager at

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J.F.K.
A Right.
Q And do you remember with whom at H.R. you filed your complaints?
A His last name was Colette.
Q One L or two?
A I think it was one.
Q That's my daughter's first name. That will not be hard to remember.
Okay. Have you ever suggested to Dr. -- is it Wilen?
A My orthopedist?
Q Yes.
A Yes.
Q Dr. Wilen or Dr. Naik that maybe they did something wrong in the manner in which they've treated you?
A I never suggested that.
Q Have you seen any doctors, any orthopedists, for a second opinion as to whether or not you received proper care?
A No.
Q Have you contacted a medical malpractice lawyer to see whether or not you received proper care?

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A No.
Q Has Dr. Wilen or Dr. Naik ever told -- have they ever told you why they think you're not getting better?
A No, they said to just continue going to therapy and you possibly never may be the same. You possibly never may be the same but continue going to therapy and, you know, just keep working at it.
Q Okay.
When did you first fill out an application for a UPS job?
A I don't recall the date.
Q Okay.
Was it -- you went over there in July of 2008. Do you recall how many months prior to July you filled out an application for the first time?
A No, I don't.
Q Okay.
Did you tell -- did they ask you or did you tell them that you had been injured on the job at Jet Blue?
A No.
Q I'm sorry, that was a compound

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question. That was a bad lawyer question. I apologize.
Did they ask you if you had been injured on a previous job?
A No.
Q Did you volunteer to them that you had been injured?
A No.
Q Okay.
Did they ask you whether or not you had any claim against Jet Blue for discrimination?
A No.
Q Did you tell them?
A No.
Q Had you applied anywhere other than UPS in 2008 for a job?
A I don't recall.
Q How did you pick -- and I take it that your job application with UPS was done on-line?
A I don't recall.
Q How did you pick UPS?
A I thought it would be a good company to work for.
Q Why is that?
A Big company. Trucks all around the

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world. Who wouldn't want to work there?
Q Did you try to apply with FedEx or any other ground company?
A I don't recall.
Q I apologize if this has been asked but what is the status of your workers' comp. claim?
A As far as what?
Q Has it been finally decided?
A No, it hasn't.
Q So it's pending.
A I would say that, yeah.
Q And the benefits you're receiving are temporary benefits?
A That's correct.
Q Do you recall when you first made your claim of discrimination?
A No, I don't.
Q You do not.
Was it before or after the January 28, 2008 incident?
A I don't recall.
MR. MORYAN: Would you mark that the next exhibit number, please?
(UPS personnel file is marked DH for Identification.)

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Q Mr. Gatto, I'm going to show you what's been supplied to my office from counsel for UPS as their personnel file on you and I'm not going to go page by page on that but I want you to take a look at that page and I want to draw your attention to the top of the page which reads Job Application and about halfway down under General Information it states, "Have you ever completed an application for employment at UPS or any UPS subsidiary?"
And it says -- it writes or reads, "Yes."
"When completed?"
"2/10/08."
Can you tell me why you applied or completed a job application in February '08 for a UPS job?
A No I couldn't.
Q And does that in any way refresh your recollection as to when your first complaints of job discrimination occurred at Jet Blue?
A I don't understand.
Q Does the fact that you filled out a job application in February 2008 for UPS in any way refresh your recollection when you first complained at Jet Blue of job discrimination?

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A I don't recall if it was the same time frame but it had to be somewhere in that ballpark because I left not too many months after that.
Q Okay.
Let me ask -- well, do you recall whether you first filled out an application for UPS or any other job before or after you first felt that you were being discriminated against at Jet Blue?
A I don't recall.
Q If you go to the second page of the packet which is the first page under the Wargo & French cover sheet --
A Which page is it?
MR. GORMLEY: The second. 1 of 2.
Q The second page. It says 1 of 2.
A Yes.
Q It indicates under the line that goes across, "Last Start Date: 7/28/2008."
Is that what you recall as when you started at UPS?
A I don't recall. I don't remember when I worked there. I told you that already.
Q Well, does that refresh your recollection?

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A No, it does not.
Q And do you see next to Termination Date 8/17/2008? Does that refresh your recollection as to when you left UPS?
A What? What does it say, my start date and what is it, termination date?
Q 8/17/2008.
A I wasn't there that many days.
Q So this is inaccurate?
A I only worked there a couple days.
Q Okay.
So are you telling me is that this document is inaccurate?
A I'm trying to remember if they had us in a class before we actually worked.
I think we had a class before we actually worked. It was like a small course or something like that. It wasn't actually working.
Technically they consider it working 'cause you're hired but you got to take a course or something like that.
Q Okay.
A From what I can remember.
Q Okay.
A And then you go out and they just put

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you out there to work. So like two days after that. So it could be right.
Q Okay.
And when you left did you tell them you left because you hurt your back or did you tell them you left --
A Absolutely.
Q You did.
Do you know why for reason for termination it reads, "Dissatisfied with type of work"?
A Who was dissatisfied, me or them?
Q You.
A I was dissatisfied with the work?
Well, I left there in tears so I don't know how they would do that, how they would come up with that.
I reported it to a guy named Mike. I don't remember his last name. But he was my immediate manager and when I couldn't straighten up and he seen tears from my eyes, he goes, "Go home" so I went home.
Q Did they fire you or did you quit?
A No, I quit. I had to. I couldn't walk.

MR. MORYAN: Okay. That's all I have.

REDIRECT EXAMINATION BY MR. GORMLEY:

Q Mr. Gatto, did you review anything in preparation for your deposition here today?
A Did I review anything?
Q Yes. Documents, medical records.
A Before?
Q Before you came here today. Not anything we showed you. Anything you may have reviewed.
A Yeah, I read over some of my documents.
Q Okay.
What documents did you review?
A What did I look over? My reports that I wrote.
Q Is that the Ramp Irregularity Report that I showed you earlier today that's been marked as defendant's exhibit E?
A Yes, I read that.
Q Okay.
Did you review anything else?
A No.
Q Did you review Mr. Thomas's statement

which has been marked as defendant's exhibit F?
A No.
Q Okay.
And other than this one-page document did you review anything else?
A No, I don't recall reading anything else.
Q Did you bring any records with you to your deposition here today?
A No, not for this.
Q Okay.
The packet that you have with you, that has nothing to do with this lawsuit?
A Absolutely nothing.
Q Thank you.
Did you ever go look to see if you could get a job with any other airlines?
A No, I never searched.
Q Did you take any medication today that would in any way inhibit your ability to testify?
A No.
MR. MORYAN: If he had said yes, we just spent eight hours doing nothing.
MR. GORMLEY: In fairness, I usually ask that in the beginning and I just skipped

right over it.
Q You indicated earlier that Rob in your Ops department was going to speak with United about their aircraft powering in. Do you remember that testimony?
A Yes.
Q Was that Rob Howe?
A No.
MR. GORMLEY: That's all I have.

RECROSS-EXAMINATION BY MR. MORYAN:

Q I have one last.
I am correct that your wife does not have a claim in this case. Correct?
A No, she doesn't.
MR. MORYAN: Okay. That's all I have.
MR. MASCOLO: No questions.
(Deposition concludes at four p.m.)

CERTIFICATE

I, ANGELA SPERDUTO, a Certified Court Reporter and Notary Public of the State of New Jersey, do hereby certify that the foregoing deposition of FRANK GATTO was taken before me on January 24, 2011 and was recorded stenographically by me and the foregoing is a true and accurate transcription of my stenographic notes.

I FURTHER CERTIFY that the witness was duly sworn by me according to law prior to testifying.

I FURTHER CERTIFY that I am not an attorney or counsel for any of the parties, that I am not related to or employed by any of the parties or by any of the attorneys in this action, and that I am not financially interested in the action.

ANGELA SPERDUTO, CCR
License No. XI00394

EXHIBIT D

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MICHAEL J. CREEGAN*

July 21, 2011

J. Silvio Mascolo, Esq.
Rebenack, Aronow & Mascolo, LLP
111 Livingston Avenue
New Brunswick, NJ 08901

Re: Gatto v. United Air Lines, Inc., et als.
Docket No. MID-L-508-10

Dear Mr. Mascolo:

Enclosed please find United's Third Request for Production of Documents to Plaintiff. Please provide responses to same within the time prescribed by the Rules of Court.

Very truly yours,

Laurie B. Kachonick

LBK:dk
Enclosure
cc: Kenneth J. Gormley, Esq.

2560924-01

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

CONNELL FOLEY LLP (JM 5681)
85 Livingston Avenue
Roseland, New Jersey 07068
(973) 535-0500
Attorneys for Defendant, United Air Lines, Inc.

FRANK GATTO Plaintiff(s), v. UNITED AIR LINES, INC., ALLIED AVIATION SERVICES, INC., and JOHN DOES 1-10 (fictitious names), Defendants.	CIVIL ACTION NO. 10-1090 (PGS)(ES) **UNITED AIRLINES, INC.'S THIRD REQUEST FOR PRODUCTION OF DOCUMENTS TO PLAINTIFF**

TO: J. Silvio Mascolo, Esq.
Rebenack, Aronow & Mascolo
111 Livingston Avenue
New Brunswick, New Jersey 08901

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, defendant, United Air Lines, Inc., demands the production of the following documents within thirty (30) days of the date hereof. These requests are continuing and the responses thereto must be supplemented to the extent required by Fed. R. Civ. P. 26(e).

DEFINITIONS

1. The term "you" and "your" refers to the party upon whom this request is being served and any employees, agents, attorneys, experts, investigators, assignees and/or successors.

2. "Document" shall mean and include all documents and things as contemplated by the Federal Rules of Civil Procedure, including but not limited to all written, typed, printed, recorded or graphic statements, communications or other matter, however produced or reproduced, regardless of origin or location, in the possession, custody, or control of you or your agents or

representatives, including, without limitation, all writings; studies; analyses; tabulations; evaluations; reports; reviews; agreements; draft agreements; contracts; communications; letters or other correspondence; messages; telegrams; telexes; telecopies; telefacsimiles; cables; memoranda; records; notes; reports; summaries; diaries; plans; specifications; meeting minutes; sound recordings or transcripts of personal or telephone conversations; records of meeting; records of conferences or interviews; telephone toll records; desk, calendars; appointment books; forecasts; accountants' work papers; drawings; graphs; charts; maps; diagrams; sketches; blueprints; estimates; bid preparation materials; tables; indexes; photographs; films; phonograph records; tapes; microfilm; microfiche; charges; ledgers; accounts; cost sheets; financial statements or reports; statistical or analytical records; minutes or records of boards of directors committee or other meetings or conferences; reports or summaries of investigation of claims or disputes; opinions or reports of consultants or experts; appraisals; reports or summaries of negotiation; books; schedules; brochures; pamphlets; circulars; stenographic, handwritten or any other notes; notebooks; projections; court or arbitration papers or pleadings; briefs; interrogatories; requests for admissions; affidavits; certifications; working papers; checks (front and back); check stubs or receipts; invoice vouchers; tape data sheets or data processing cards or discs or any other written, recorded, transcribed, punched, taped, filed or graphic matter, however produced or reproduced; and any other document, writing, or other data, compilation of whatever description, including but not limited to any information contained in any computer, although not yet printed out or in the memory units containing such data from which information can be obtained or translated into reasonable usable form, and all drafts. "Documents" refers to the original or identical copy, when the original is unavailable, and any non-identical copies (where it differs from the original in any respect because of alterations, notes, comments, attachments or otherwise) in your possession, custody, care or control. "Documents" refers to the original or identical copy, when the original is unavailable, and any non-identical copies (where it differs from the original in any respect because of alterations, notes, comments, attachments or otherwise) in your possession, custody, care or control.

3. "Persons" means the plural as well as the singular and includes any natural person or any firm, corporation, association, joint venture, partnership or other entity.

4. "Identify" means

(a) referring to a natural person or persons, state the full name, age, address or the last-known residence and principal place of business of each such person, and a description of their business affiliation and position during the period to which the document request refers.

(b) when used in reference to a business organization or entity, state the full name of such organization or entity, the address of the principal place of business and a description of the nature of its business during the period to which the document request refers.

(c) with reference to a document, state:

(i) the type of document, the date and general subject matter;

(ii) the name, address and position of the person in charge of preparing each such document and the person who signed each such document;

(iii) the date or dates of preparation thereof;

(iv) the full name and position of each person to whom such item of written matter was distributed; and

(v) the full name and last known address of each person who presently has custody, control or possession thereof.

(d) When used with reference to an oral communication, state the date upon which and the place where such oral communication occurred, identify each person who participated therein or was present when it was made, the stated substance and the identity of each document which in all or in part refers or relates to said oral communication.

(e) When used with reference to an act or action, state the date upon which the act took place, the names and addresses of the person or persons who performed the act and the names and addresses of any witnesses and the reasons for which the act was done.

5. "And" as well as "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the document request all responses that might otherwise be construed to be outside the scope.

6. "Each" shall be construed to include the word "every" and "every" shall be construed to include the word "each". "Any" shall be construed to include the word "all" and "all" shall be construed to include the word "any".

7. The use of a verb in any tense shall be construed as the use of the verb in all other tenses, wherever necessary to bring within the scope of the document request all responses that might otherwise be construed to be outside its scope.

8. A plural noun shall be construed as a singular noun and a singular noun shall be construed as a plural noun, whenever necessary to bring within the scope of the document request all responses that might otherwise be construed to be outside its scope.

9. The term "you" or "your" as used herein shall refer to plaintiff, Frank Gatto, and his representatives and former representatives.

10. The term "Allied Aviation" as used herein shall mean Allied Aviation Services, Inc. and its employees, former employees, agents, former agents, partners, former partners, shareholders, former shareholders, assignees, owners, successors of the owner, officers, former officers, directors, former directors, representatives and former representatives.

11. The term "Complaint" as used herein shall refer to the complaint captioned Frank Gatto v. Allied Aviation Services, Inc., et al., Civil Action No. 10-1090, District Court for the District of New Jersey.

INSTRUCTIONS

1. You are requested to answer each Document Request propounded herein with an indication of the particular paragraph(s) hereof to which the answer is responsive.

2. Annex to your answers hereto copies of all documents to be identified by these Document Requests referred to or relied upon in your answers.

3. When a Document Request asks for the identity of any document, you may, in lieu of identifying the document, produce the document for inspection and copying with an identification of the Document Request to which it responds.

4. With respect to any responsive document that was formerly in your possession, custody or control, and has been lost or destroyed, state:

(a) the type of document;

(b) the subject matter and contents of the document;

(c) the author of the document;

(d) each person to whom the original or a copy of the document was sent;

(e) the date on which the document was prepared or transmitted;

(f) the date on which the document was lost or destroyed, and, if destroyed, the condition of and reasons for such destruction and the persons requesting and performing the destruction.

5. This request shall be deemed continuing so as to require prompt, further and supplemental production (without further request by the propounder of these document requests) if

you locate or obtain possession, custody or control of additional responsive documents at any time prior to trial herein.

6. If any Document Request is deemed to call for the production of privileged or attorney work product materials and such privilege or attorney work product is asserted, identify in writing each document so withheld and provide the following information:

(a) The reason for withholding the document;

(b) A statement of the basis for the claim of privilege, work product or other ground of non-disclosure;

(c) A brief description of the document, including,

(i) the date of the document;

(ii) the number of pages, attachments and appendices;

(iii) the names of its author(s), or preparer(s) and an identification by employment and title of each such person;

(iv) the name of each person who was sent, shown or received blind or carbon copies of the document, or has had access to or custody of the document, together with an identification of each such person; and

(v) the present custodian.

7. The person answering these Document Requests shall designate which information is not within his or her personal knowledge and, as to that information, shall state the name and address of every person from whom it was received or, if the source of information is documentary, shall state a full description of each document, including the location thereof, and annex copies thereto and, with regard to each and every document attached hereto, shall state which Document Request it is being attached in response to.

8. If a privilege not to answer is claimed by you, identify each matter to which the privilege is claimed and the nature of the privilege and the legal and factual basis for each such claim. If objection is raised in any Document Request contained herein, identify in exact detail the nature of the objection and the legal and/or factual basis for each such objection.

9. This request shall be deemed continuing so as to require, prompt, further and supplemental production (without further request by the propounder of this document request) if you locate or obtain possession, custody, or control of additional responsive documents at any time prior to trial herein.

DOCUMENTS AND THINGS REQUESTED

1. Any and all documents including, but not limited to, all records of sales, from 2008 through the present related to any e-bay business operated by plaintiff, including, but not limited to any business known as Jerseys Best Bargains, and/or any online business operated by plaintiff.

2. Any and all documents or records of wall posts, comments, status updates, or personal information posted or made by plaintiff on Facebook and/or any social media website regarding the January 21, 2008 accident that is the subject of the instant action.

3. Any and all documents or records of wall posts, comments, status updates, or personal information posted or made by plaintiff on Facebook and/or any social media website regarding any e-bay business operated by plaintiff from 2008 through the present.

4. Any and all documents or records of wall posts, comments, status updates, or personal information posted or made by plaintiff on Facebook and/or any social media website from 2008 through the present.

This demand shall be considered continuing in force and effect pursuant to the Federal Rules of Civil Procedure.

CONNELL FOLEY LLP
Attorneys for Defendant,
United Air Lines, Inc.

By: ____________________
Laurie B. Kachonick

Dated: July 21, 2011

EXHIBIT E

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Attorneys & Counselors

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July 27, 2011

VIA E-MAIL AND U.S. MAIL

J. Silvio Mascolo, Esq.
Rebenack, Aronow & Mascolo, LLP
111 Livingston Avenue
New Brunswick, New Jersey 08901

Re:	***Frank Gatto v. Allied Aviation Services, Inc.***		
	Docket No.	**:**	**10-01090 (PGS) (ES)**
	Our File No.	**:**	**1003446.00008**

Dear Mr. Mascolo:

As you are aware, co-defendant United Airlines has served Second and Third Requests for the Production of Documents in this matter. Please be advised that we hereby join in these requests and request that we also be provided with a copy of any and all documentation and/or authorizations produced in connection with the same.

Thank you for your attention in this regard. Should you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,

LOCKE LORD BISSELL & LIDDELL LLP

Kenneth J. Gormley

KJG:sc

EXHIBIT F

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October 13, 2011

J. Silvio Mascolo, Esq.
Rebenack, Aronow & Mascolo, LLP
111 Livingston Avenue
New Brunswick, NJ 08901

Re: Gatto v. United Air Lines, Inc., et als.
Civil Action No. 10-1090(PGS)(ES)

Dear Mr. Mascolo:

As you are aware, United served a Second Request for Production of Documents upon plaintiff on May 10, 2011. By letter dated July 18, 2011, you were advised that plaintiff's responses to same were overdue. Additionally, United served a Third Request for Production of Documents upon plaintiff on July 21, 2011. By email dated July 26, 2011, we advised that both sets of document requests were outstanding. To date, we have not received your client's responses to these requests. Please consider this our good faith attempt to resolve this matter. Should you fail to provide responses to the referenced document requests within ten (10) days, we will be forced to seek court intervention.

Enclosed are authorizations for the release of documents and information from Facebook, MySpace, and eBay and PayPal. Kindly have plaintiff complete and execute the enclosed authorizations and return same to our office as soon as possible.

Thank you for your courtesies in this regard.

Very truly yours,

Laurie B. Kachonick

LBK:dk
Enclosure
cc: Kenneth J. Gormley, Esq. (via email)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

FRANK GATTO Plaintiff(s), v. UNITED AIR LINES, INC., ALLIED AVIATION SERVICES, INC., and JOHN DOES 1-10 (fictitious names), Defendants.	CIVIL ACTION NO. 10-1090 (PGS)(ES)

CONSENT AND AUTHORIZATION TO RELEASE SOCIAL MEDIA PROFILE CONTENT

TO THE CUSTODIAN OF RECORDS
Facebook, Inc.
c/o Corporation Services Company
2730 Gateway Oaks Drive, Suite 100
Sacramento, California 95833

I, ______________________________, authorize, direct and consent to the release of a full and complete copy of the contents of my Facebook page and Facebook account, including but not limited to all electronically stored information, files, profiles, postings, direct messages, status updates, wall comments, groups joined, activity streams, feeds, blog entries, photographs, videos, and online communications of any type appearing as part of said Facebook page and Facebook account from ____ through ____. This shall include all e-mail messages and files, deleted files, temporary files, system-history files, cached files, metadata, audit trails, and any Internet or web browser-generated information stored in textual, graphical, or audio format or stored via cloud, which pertain to or constitute part of this Facebook page and Facebook account.

I represent that I am the originator or an addressee or intended recipient of the communications referenced herein, or the subscriber in the case of remote computing service, and I am providing this consent and authorization pursuant to the Stored Communications Act, 18 U.S.C. § 2702(b)(3). This consent and authorization does not authorize any representative, employee, or agent of Facebook to communicate orally or in writing with any person about the content of my Facebook page and Facebook account. This litigation does not prohibit administrative communications for the purposes of copying or mailing records covered by this consent and authorization.

These records are to be furnished to the undersigned account holder or to the attorney I have designated below for the limited purpose of discovery in the above-captioned litigation, and for no other purpose.

Please send all records to:

Laurie B. Kachonick, Esq.
Connell Foley LLP
85 Livingston Avenue
Roseland, NJ 07068

User's Full Name: ______________________________

Facebook User's Username: ______________________________

Facebook User's Password: ______________________________

Facebook Profile URL: ______________________________

Facebook User ID: ______________________________

(Facebook IDs are intrinsic in Facebook URLs. If you have your profile page URL, you can find the ID by looking for the string "id" in the URL and passing along the number immediately following. For instance, the user ID for the following profile is "123456789": http://www.facebook.com/profile.php?id=123456789)

School/Network affiliations (if any): ______________________________

Facebook User's Birthdate: ______________________________

Facebook User's Email Address Associated with Facebook Account: ______________

Facebook User's IM Account ID: ______________________________

Phone Number(s): ______________________________

Address: ______________________________

____
Facebook User's Signature

____
Facebook User's Printed Name

Sworn to before me this

_______ day of _________________, 2011.

____
Notary Public

State of______________________

Qualified in County of ______________

My Commission Expires: ____________

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

FRANK GATTO Plaintiff(s), v. UNITED AIR LINES, INC., ALLIED AVIATION SERVICES, INC., and JOHN DOES 1-10 (fictitious names), Defendants.	CIVIL ACTION NO. 10-1090 (PGS)(ES)

To: accountcare@support.myspace.com

I, ______________________, being duly sworn on this ___ day of ________, 2011 do hereby state the following:

I, ______________________ have one or more profiles on MySpace.com. The URLs for those profiles are:

____.

I understand that Connell Foley LLP is counsel for United Air Lines, Inc. in the above captioned litigation and that Connell Foley LLP is requesting that I grant my consent to authorize Connell Foley LLP to access, request, receive, review, examine, inspect, photograph and copy the following information from the above identified MySpace.com profile/account:

> All profile information and content, streams, applications, threads, themes, events, photographs, videos, blurbs, blogs, messages, and all other communications or electronically stored information, including deleted files, temporary files, system history files, cached files, metadata or any Internet or web browser-generated information stored in textual, graphical or audio format or stored via cloud which pertain or constitute part of the above referenced MySpace page or account.

I represent that I am the originator or an addressee or intended recipient of the communications referenced herein, or the subscriber in the case of remote computing service, and I am providing this consent and authorization pursuant to the Stored Communications Act, 18 U.S.C. § 2702(b)(3). This consent and authorization does not authorize any representative, employee, or agent of MySpace to communicate orally or in writing with any person about the content of my MySpace page and MySpace account. This litigation does not prohibit administrative communications for the purposes of copying or mailing records covered by this consent and authorization.

The following information should be used to verify my identity:

Email address for account: ____________________________

Password for account: ________________________________

Date of Birth for account: _____________________________

Zip Code for account: ________________________________

Pursuant to this Consent, I waive any claims against, indemnify and hold harmless MySpace.com, its affiliates, and their respective directors, officers, agents and employees from and against any claims, damages or expenses relating to or arising from, in whole or in part, the disclosure of such information, records or data.

I have not been promised anything in exchange for providing this consent and authorization.

In witness whereof, the undersigned makes the above statements under penalty of perjury.

Signature ____________________________________ Date ____________________

Printed Name

____

Sworn to before me this

________ day of __________________, 2011.

____

Notary Public

State of________________________________

Qualified in County of __________________

My Commission Expires: ________________

Please send all documents to:

Laurie B. Kachonick, Esq.
Connell Foley LLP
85 Livingston Avenue
Roseland, NJ 07068

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

FRANK GATTO Plaintiff(s), v. UNITED AIR LINES, INC., ALLIED AVIATION SERVICES, INC., and JOHN DOES 1-10 (fictitious names), Defendants.	CIVIL ACTION NO. 10-1090 (PGS)(ES)

To: eBay, Inc. & PayPal
2211 North First Street,
San Jose, CA 95131
(408) 967-9915 (facsimile)

I, ________________________, being duly sworn on this ___ day of ________, 2011 do hereby state the following:

I, ______________________ have one or more accounts on eBay and/or PayPal. The User ID's for those accounts are:

____.

I understand that Connell Foley LLP is counsel for United Air Lines, Inc. in the above captioned litigation and that Connell Foley LLP is requesting that I grant my consent to authorize Connell Foley LLP to access, request, receive, review, examine, inspect, photograph and copy the following information from the above identified eBay and/or PayPal account:

> All profile information and content, transaction history, account listings, bid history, member information, and all other communications or electronically stored information, including deleted files, temporary files, system history files, cached files, metadata or any Internet or web browser-generated information stored in textual, graphical or audio format or stored via cloud which pertain or constitute part of the above referenced eBay and/or PayPal account.

I represent that I am the originator or an addressee or intended recipient of the communications referenced herein, or the subscriber in the case of remote computing service, and I am providing this consent and authorization pursuant to the Stored Communications Act, 18 U.S.C. § 2702(b)(3). This consent and authorization does not authorize any representative, employee, or agent of eBay and/or PayPal to communicate orally or in writing with any person about the content of my eBay and/or PayPal account. This litigation does not prohibit administrative communications for the purposes of copying or mailing records covered by this consent and authorization.

The following information should be used to verify my identity:

Account holder/User's Full Name: ______________________________

Address: ____

Phone Number: ____

Email address for account: ____________________________________

Password for account: ____

Date of Birth for account: ______________________________________

I have not been promised anything in exchange for providing this consent and authorization. These records are to be furnished to the undersigned account holder or to the attorney I have designated below for the limited purpose of discovery in the above-captioned litigation, and for no other purpose.

Please send all records to:

Laurie B. Kachonick, Esq.
Connell Foley LLP
85 Livingston Avenue
Roseland, NJ 07068

In witness whereof, the undersigned makes the above statements under penalty of perjury.

Signature | Date

______________________________ | ____________________

Printed Name

____

Sworn to before me this

_______ day of ________________, 2011.

____
Notary Public
State of______________________________
Qualified in County of ________________
My Commission Expires: ______________

EXHIBIT G

RA&M

REBENACK ARONOW MASCOLO MILLER, LLP.
ATTORNEYS AT LAW

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T: 732.247.3600 F: 732.247.3630 WWW.RAMMLAW.COM

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ARTHUR H. MILLER*
CARLOS SANCHEZ

ANNIE CHA*
ERIC M. MILLER

LYNN F. MILLER
BARBARA BROSNAN RIVERA
OF COUNSEL

CERTIFIED BY THE † SUPREME COURT OF NEW JERSEY AS A CIVIL TRIAL ATTORNEY

ALSO ADMITTED TO * PRACTICE IN NEW YORK

November 17, 2011

Laurie Kachonick, Esq.
Connell Foley, LLP
85 Livingston Avenue
Roseland, NJ 07068-3702

Kenneth J. Gormley, Esq.
Locke Lord
Three World Financial Center
New York, NY 10281

Re: **Gatto, Frank v. United Air Lines, Inc.**
Our File No.: 08-0324 JSM
Docket No.: 10-01090 (PGS)(ES)
Date of Loss: 01/20/2008

Dear Counsel:

Enclosed please find the Plaintiff's Response to the Second and Third Notice to Produce propounded by Defendant, United Air Lines, Inc.

Also enclosed are authorizations pertaining to E.Bay, PayPal and My Space. The Plaintiff opposes providing an authorization to Facebook. This discovery request is irrelevant and not reasonably calculated to lead to the discovery of any admissible evidence.

A review of my file indicates that the Plaintiff has now provided responses to all discovery requests and authorizations for the release of records, with the exception of a completed CMS form which I expect to have shortly. Please advise if there are any outstanding discovery requests.

Should you have any questions, please do not hesitate to contact my office.

Very truly yours,

J. SILVIO MASCOLO
jmascolo@rammlaw.com

JSM/gmr
Enclosures

EXHIBIT H

CONNELL FOLEY LLP
ATTORNEYS AT LAW

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FAX: (215) 665-5727

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*ALSO ADMITTED IN NEW YORK
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PLEASE REPLY TO ROSELAND, NJ

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TARA L. TOULOUMIS*
MICHAEL J. CREEGAN*
THOMAS M. BLEWITT
BRIAN WOLFSON
SONYA B. COLE
MOLLY F. HURLEY

November 28, 2011

Via E-Mail
J. Silvio Mascolo, Esq.
Rebenack, Aronow & Mascolo, LLP
111 Livingston Avenue
New Brunswick, NJ 08901

Re: Gatto v. United Air Lines, Inc., et als.
Civil Action No. 10-1090(PGS)(ES)

Dear Mr. Mascolo:

As you are aware, United provided authorizations to plaintiff for the release of documents and information from Facebook, MySpace, and eBay and PayPal by letter dated October 13, 2011. We are in receipt of your letter dated November 17, 2011, enclosing executed authorizations for the release of information from MySpace, and eBay and PayPal. The authorizations are incomplete and do not provide certain necessary information regarding plaintiff and his accounts.

With respect to the authorization directed to MySpace, we request plaintiff provide the password for the account, date of birth for the account, and zip code for the account. Additionally, for the eBay and PayPal authorizations, we request plaintiff provide the address, phone number, email address for the account, password for the account, and date of birth for the account.

The eBay and PayPal authorization completed by plaintiff provides that the User ID for the accounts are "Frankg06." Plaintiff's responses to United's Third Notice to Produce indicates plaintiff operated an e-bay business known as Jersey Best Bargains. Please advise if the User ID Frankg06 identified on the authorization is the same for the Jersey Best Bargains business operated by plaintiff or if that is an additional account held by plaintiff.

Furthermore, plaintiff has failed to provide an authorization for the release of documents and information from Facebook. However, plaintiff has not given any reason for doing so. We request plaintiff provide the requested authorization in advance of the December 1, 2011 settlement conference with the Court. It is unlikely this case will settle without the requested authorizations. This information is highly relevant to this matter and should plaintiff continue to refuse to provide an executed authorization, we shall be forced to address this issue with the Court at the upcoming conference.

Thank you for your courtesies in this regard.

Very truly yours,

Laurie B. Kachonick

LBK:dk
cc: Kenneth J. Gormley, Esq. (via email)

EXHIBIT I

CONNELL FOLEY LLP

ATTORNEYS AT LAW

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MICHAEL J. CREEGAN*
THOMAS M. BLEWITT
BRIAN WOLFSON
SONYA B. COLE
MOLLY F. HURLEY

December 1, 2011

Via E-Mail
J. Silvio Mascolo, Esq.
Rebenack, Aronow & Mascolo, LLP
111 Livingston Avenue
New Brunswick, NJ 08901

Re: **Gatto v. United Air Lines, Inc., et als.**
Civil Action No. 10-1090(PGS)(ES)

Dear Mr. Mascolo:

As you are aware, a settlement conference was held today before Magistrate Judge Cathy L. Waldor. As a result of the conference, plaintiff is required to change his Facebook password to "alliedunited." Kindly confirm that this has been done by the close of business tomorrow, December 2, 2011.

Thank you for your courtesies in this regard.

Very truly yours,

Laurie B. Kachonick

cc: Kenneth J. Gormley, Esq. (via email)

2618767-01

EXHIBIT J

Laurie B. Kachonick

From: Laurie B. Kachonick
Sent: Monday, December 05, 2011 3:25 PM
To: Jay Mascolo
Cc: 'Gormley, Kenneth'; Jeffrey W. Moryan
Subject: Gatto v. United
Attachments: img-Z01132649-0001.pdf

Jay,

As discussed at the settlement conference held on December 1, 2011, please confirm today that plaintiff has changed his password to his Facebook account to "alliedunited." Thank you.

Regards,
Laurie

From: Laurie B. Kachonick
Sent: Thursday, December 01, 2011 1:34 PM
To: Jay Mascolo
Cc: 'Gormley, Kenneth'; Jeffrey W. Moryan
Subject: Gatto v. United

Jay,

Please see the attached letter.

Laurie B. Kachonick

Associate
Connell Foley LLP
85 Livingston Avenue
Roseland, NJ 07068
Office: (973) 535-0500 ext. 2373
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Connell Foley LLP

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EXHIBIT K

Laurie B. Kachonick

From: Jay Mascolo [JMascolo@rammlaw.com]
Sent: Tuesday, December 06, 2011 12:17 PM
To: Laurie B. Kachonick
Cc: 'Gormley, Kenneth'; Jeffrey W. Moryan
Subject: RE: Gatto v. United

Laurie-

It was changed last night.

Sorry I did not get back earlier, I was in trial yesterday and this morning.

Jay

From: Laurie B. Kachonick [mailto:LKachonick@connellfoley.com]
Sent: Monday, December 05, 2011 3:25 PM
To: Jay Mascolo
Cc: 'Gormley, Kenneth'; Jeffrey W. Moryan
Subject: Gatto v. United

Jay,

As discussed at the settlement conference held on December 1, 2011, please confirm today that plaintiff has changed his password to his Facebook account to "alliedunited." Thank you.

Regards,
Laurie

From: Laurie B. Kachonick
Sent: Thursday, December 01, 2011 1:34 PM
To: Jay Mascolo
Cc: 'Gormley, Kenneth'; Jeffrey W. Moryan
Subject: Gatto v. United

Jay,

Please see the attached letter.

Laurie B. Kachonick

Associate
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Connell Foley LLP

STATEMENT OF CONFIDENTIALITY: The information contained in this transmission including

EXHIBIT L

Laurie B. Kachonick

From: Jay Mascolo [JMascolo@rammlaw.com]
Sent: Friday, December 09, 2011 10:06 AM
To: Laurie B. Kachonick
Cc: 'Gormley, Kenneth'; Jeffrey W. Moryan
Subject: RE: Gatto v. United Air Lines, Inc.

Laurie,

My client informed me that he will be obtaining the information either today or this weekend. He does not have access to a secure computer.

Secondly, the authorizations provided were for Defense counsel to obtain records directly from Facebook and EBay/PayPal in California. I am informed that his Facebook account was logged onto from an IP address from New Jersey, that is not, his two days ago. The records are being requested directly from California correct?

Jay

From: Laurie B. Kachonick [mailto:LKachonick@connellfoley.com]
Sent: Wednesday, December 07, 2011 10:10 AM
To: Jay Mascolo
Cc: 'Gormley, Kenneth'; Jeffrey W. Moryan
Subject: Gatto v. United Air Lines, Inc.

Jay,

Attached is the authorization form plaintiff executed for release of information from MySpace. Plaintiff failed to include the URL for his profile and the password for his account.

Myspace requires the exact Friend ID number or URL that corresponds to the profile for which information is being sought to be included. To locate the Friend ID number or the URL for a particular profile using a URL, plaintiff can go to his account on Myspace. The URL containing the Friend ID will be found in the web address bar at the top of the screen. For example, in the URL http://profile.myspace.com/index.cfm?fuseaction=user.viewprofile&friendid=6221, the Friend ID is 6221.

Additionally, the password for the account must be provided. If plaintiff objects to providing his current password, please have him change it to "alliedunited" as was done with his Facebook account. Please provide the requested information by the end of this week. Thank you.

Regards,
Laurie

Laurie B. Kachonick

Associate
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IRS CIRCULAR 230 DISCLOSURE: As required by U.S. Treasury Regulations governing tax practice, you are advised that any written tax advice contained herein was not intended or written to be used, and cannot be used, by any taxpayer for the purpose of avoiding tax penalties that may be imposed under the Internal Revenue Code.

EXHIBIT M

Laurie B. Kachonick

From: Laurie B. Kachonick
Sent: Thursday, December 15, 2011 3:43 PM
To: 'Jay Mascolo'
Cc: 'Gormley, Kenneth'; Jeffrey W. Moryan
Subject: RE: Gatto v. United Air Lines, Inc.

Jay,

I apologize for the delay in getting back to you. I was away on vacation.

The Facebook account was accessed to confirm the password was changed, but will not be accessed again as we have sent the authorization to Facebook.

Have you obtained the other requested information from plaintiff related to his eBay/PayPal and MySpace accounts?

Thanks,
Laurie

Laurie B. Kachonick

Associate
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From: Jay Mascolo [mailto:JMascolo@rammlaw.com]
Sent: Friday, December 09, 2011 10:06 AM
To: Laurie B. Kachonick
Cc: 'Gormley, Kenneth'; Jeffrey W. Moryan
Subject: RE: Gatto v. United Air Lines, Inc.

Laurie,

My client informed me that he will be obtaining the information either today or this weekend. He does not have access to a secure computer.

Secondly, the authorizations provided were for Defense counsel to obtain records directly from

Facebook and EBay/PayPal in California. I am informed that his Facebook account was logged onto from an IP address from New Jersey, that is not, his two days ago. The records are being requested directly from California correct?

Jay

From: Laurie B. Kachonick [mailto:LKachonick@connellfoley.com]
Sent: Wednesday, December 07, 2011 10:10 AM
To: Jay Mascolo
Cc: 'Gormley, Kenneth'; Jeffrey W. Moryan
Subject: Gatto v. United Air Lines, Inc.

Jay,

Attached is the authorization form plaintiff executed for release of information from MySpace. Plaintiff failed to include the URL for his profile and the password for his account.

Myspace requires the exact Friend ID number or URL that corresponds to the profile for which information is being sought to be included. To locate the Friend ID number or the URL for a particular profile using a URL, plaintiff can go to his account on Myspace. The URL containing the Friend ID will be found in the web address bar at the top of the screen. For example, in the URL http://profile.myspace.com/index.cfm?fuseaction=user.viewprofile&friendid=6221, the Friend ID is 6221.

Additionally, the password for the account must be provided. If plaintiff objects to providing his current password, please have him change it to "alliedunited" as was done with his Facebook account. Please provide the requested information by the end of this week. Thank you.

Regards,
Laurie

Laurie B. Kachonick

Associate
Connell Foley LLP
85 Livingston Avenue
Roseland, NJ 07068
Office: (973) 535-0500 ext. 2373
Fax: (973) 535-9217
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EXHIBIT N

facebook

December 7, 2011

VIA MAIL

Laurie B. Kachonick
85 Livingston Avenue
Roseland, N.J. 07068-3702

DEC 1 2 2011

Re: Your subpoena to Facebook, Inc. our ref. RT 53879

Attorney Laurie B. Kachonick,

We are responding to the subpoena you directed to Facebook, Inc. issued on behalf of a private, non-governmental party.

First, Facebook is unable to provide the contents of a Facebook user's account in response to subpoenas issued on behalf of private individuals. Federal law specifically prohibits service providers such as Facebook from disclosing the contents of a user's account (for example, messages, Wall posts, photos, etc.) in response to legal process issued on behalf of private parties. You may, however, seek the content directly from the user, who owns and has custody and control of the content in his or her account and to whom the federal law prohibition does not apply. Active Facebook users can log in to their accounts at any time and preserve, collect, produce and authenticate the contents of their accounts. Facebook also provides to all users a "Download Your Information" tool accessible through the "Account Settings" drop down menu. This tool allows users to download the contents of their accounts.

Second, the most Facebook can provide in response to subpoenas issued on behalf of private parties is non-content information. To compel Facebook to provide this information, however, you must first properly identify the account at issue by providing the email address, Facebook user identification number or vanity URL associated with the account and ensure that your subpoena or other legal process is not objectionable for any other reason.

Third, please consider this letter Facebook's formal objection to your subpoena and include a copy with any pleadings you may file or any meet and confer correspondence you may send.

I. Federal Law Prohibits Facebook From Disclosing the Content of a User's Account Pursuant to a Civil or Non-governmental Subpoena.

The federal Stored Communications Act ("SCA") prohibits service providers from disclosing the contents of electronic communications held in electronic storage or carried or maintained on a remote computing service to any person. *See* 18 U.S.C. § 2702(a)(1), (2). There are eight limited exceptions to this prohibition; none of which enable subpoenas issued on behalf of

facebook

private parties to override the statute's flat prohibition. *See* 18 U.S.C. § 2702(b)(1)-(8). Courts have uniformly held that the SCA prohibits service providers from disclosing user content pursuant to subpoenas issued on behalf of private parties.[1]

As noted above, any and all production demands for content should be directed to the applicable Facebook user.[2] The SCA's prohibition on the disclosure of content extends only to service providers, not to users. Facebook is a stranger to your dispute and takes no position on whether content is ultimately discoverable or admissible in your case. The SCA, however, makes clear that user content may not be obtained from Facebook.

II. Subpoenas Reaching Outside the Issuing Court's Subpoena Power

Facebook and the custodians who have control over Facebook's data are located in Palo Alto, California, which is also where Facebook resides. Therefore, federal civil subpoenas must issue from the Northern District of California and state court subpoenas must issue from a California state court or be properly domesticated under California law. Subpoenas issued on behalf of private parties and seeking user content are invalid no matter the jurisdiction.

III. Improperly Served Process

Facebook requires personal service of subpoenas issued on behalf of private parties.

IV. Overly Broad, Unduly Burdensome and Vague Requests

Facebook objects to requests for non-content that are overly broad, unduly burdensome and/or vague due to volume, lack of specificity, or for other reasons.

---

[1] *See Theofel v. Alwyn Farey-Jones*, 359 F.3d 1066, 1073 (9th Cir. 2004) (a subpoena seeking email cannot compel production of electronic communications under the SCA); *Chasten v. Franklin*, No. C10-8025, 2010 U.S. Dist. Lexis 113284, at *5 (N.D. Cal. Oct. 14, 2010) (holding that a service provider's "compliance with the [civil] subpoena would be an invasion . . . of the specific interests that the [SCA] seeks to protect") (citation omitted); *Crispin v. Christian Audigier, Inc.*, 717 F. Supp. 2d. 965, 974-75 (C.D. Cal. 2010) (under 18 U.S.C. § 2703(b) only governmental entities can compel production of the content of electronic communications from service providers); *In re Subpoena Duces Tecum to AOL, LLC*, 550 F. Supp. 2d 606, 611 (E.D. Va. 2008) ("the [SCA] does not include an exception for the disclosure of electronic communications pursuant to civil discovery subpoenas."); *Flagg v. City of Detroit*, 252 F.R.D. 346, 366 (E.D. Mich. 2008) (declining to address whether a third-party service provider must respond to a civil subpoena for content but noting that "it seems apparent" that it would be unlawful for the service provider to do so); *Viacom Int'l Inc. v. YouTube Inc.*, 253 F.R.D. 256 (S.D.N.Y. 2008) (SCA "contains no exception for disclosure of [the content of] communications pursuant to civil discovery requests"); *F.T.C. v. Netscape Comm. Corp.*, 196 F.R.D. 559 (N.D. Cal. 2000) (SCA prohibits the disclosure of stored electronic communications in response to a subpoena); *O'Grady v. Superior Court*, 139 Cal. App. 4th 1423 (Cal. App. 2006) (a service provider's compliance with a court order to produce electronic communications would be an "unlawful act"); *see also United State v. Warshak, et al.*, Nos. 08-3997/4085/4087/4212/4429; 09-3176 at 23 (6th Cir. Dec. 14, 2010) (governmental entities can compel the production of the content of electronic communications from an electronic communications service provider using only a search warrant supported by a finding of probable cause).

[2] *Flagg*, 252 F.R.D. at 348, 366-367; *O'Grady* 139 Cal. App. 4, at 1446.

facebook

V. Requests Seeking Privileged Communications or Other Protected Information

Facebook objects to your subpoena to the extent it seeks protected or privileged information, including information protected by the attorney-client privilege or Facebook's confidential, proprietary, or trade secret information.

VI. Improper Requests for Testimony and/or Declarations

Facebook is unable to provide custodian or expert witnesses for trial or deposition and an appearance is unnecessary. Pursuant to the California Rules of Evidence and the Federal Rules of Evidence, any business records produced are self-authenticating[3] and/or the user who created and maintained the content is the proper person to authenticate that information.

VII. Tender of Fees and Processing Time for Non-Content

If you continue to seek non-content information, Facebook requests payment of $500.00 per UID to help offset the costs incurred by Facebook in processing and responding to a subpoena issued by a private party. Facebook requires a minimum of 30 days to process non-content subpoenas. Delivery of any non-content documents may be delayed beyond 30 days without payment in full. Please remit payment by check payable to Facebook, Inc. to the attention of Facebook Security at 1601 S. California Avenue, Palo Alto, California, 9304. Please note the case name and the Facebook RT# above on your check.

If Facebook provides any materials in response to this subpoena, it does so without waiving any of its available objections or positions on the validity of your process, whether noted above or not. Also, neither this response nor any production constitutes consent by Facebook to the jurisdiction in any court or to the production of any additional materials or information. Facebook reserves its rights to seek its fees and costs associated with resisting your subpoena.

We trust this letter resolves your concerns. If not, please respond to it and include the "RT" number on your correspondence. If after fulfilling your meet and confer obligations, you seek the aid of a court in enforcing your subpoena over these objections, please include a copy of this letter or with any pleadings you may file. In addition, please include a copy of this letter with any correspondence you may have with the account holder whose content you are seeking.

Sincerely,

/S/ Parvez Jamshed
Facebook, Inc.

[3] Calif. Evid. Code §§ 1561-64; F.R.E. 902, 903

Parvez Jamshed

Dear Attorney Laurie B. Kachonick,

Federal law prohibits service providers such as Facebook from disclosing the contents of communications (e.g. messages, Wall posts, photos, etc.) in response to requests from and/or process issued on behalf of private parties. This includes defendants in criminal cases and parties to civil litigation. Specifically, the Stored Communications Act, 18 U.S.C. §§ 2701 et seq., prohibits Facebook from disclosing the contents of an account to any non-governmental entity.

Requests for contents should be sent directly to the Facebook user at issue who may satisfy any discovery obligations relating to their Facebook account by preserving, producing and authenticating that data. The user may log into their account and collect the contents thereof. Facebook also provides a "Download Your Information" tool, which is accessible to the user through the "Account Settings" drop down menu.

If a user cannot access content because he or she disabled or deleted his or her account, Facebook will, to the extent possible, provide reasonably available data to the user.

For additional information please see http://www.facebook.com/help/?page=1057 and http://www.facebook.com/help/?page=849

Thanks, Parvez Jamshed
Facebook Security/Legal

EXHIBIT O

Laurie B. Kachonick

From: Jay Mascolo [JMascolo@rammlaw.com]
Sent: Friday, January 20, 2012 4:56 PM
To: Gormley, Kenneth; Laurie B. Kachonick
Subject: Gatto v. United

Ken/Laurie

An interesting issue has been brought to my attention by my client when I attempted to access his Facebook account last week.

As you know, Mr. Gatto provided both his username and password and authorization to access his Facebook account at the Settlement Conference on December 1, 2011. All Counsel represented that there would be no access to this account and this information was to be used solely for the authorization for records sent to the Facebook corporate office.

On December 6, 2011 at 8:45 a.m. Mr. Gatto learned that his Facebook account had been accessed by a specific IP address in NJ. On December 7, 2011 at 11:59 a.m., Mr. Gatto was again informed that the Facebook account had been accessed by the same IP address.

Having supplied the requested information for this lawsuit and concerned of the unauthorized accesses to his account, Mr. Gatto deactivated the Facebook account on December 16, 2011.

I learned of this last week when I attempted to obtain the information we spoke about with Judge Waldor on January 6, 2011.

Mr. Gatto has all of the documentation regarding the 12/6/11 and 12/7/11 accesses to his account.

I have instructed Mr. Gatto to contact Facebook and reactivate the account, and he is awaiting a response. However, I am told that once an account is deleted/deactivated, it can not be reactivated.

If it cannot be reactivated and you still seek this information, we should bring the entire issue before Judge Waldor.

Jay

From: Gormley, Kenneth [mailto:KGormley@lockelord.com]
Sent: Thursday, January 05, 2012 4:20 PM
To: Jay Mascolo
Cc: Laurie B. Kachonick; jmoryan@connellfoley.com
Subject: RE: Gatto v. United

Jay:

I think you are correct as to the conversations that were had at the end of the conference. However, the subsequent December 1, 2011 Letter Order indicates that the plaintiff was to initiate the call. See attached.

Needless to state, I do not have a preference as to who initiates. I just need the call in information. Kindly advise.

EXHIBIT P

Laurie B. Kachonick

From: Laurie B. Kachonick
Sent: Monday, January 23, 2012 10:35 AM
To: 'Jay Mascolo'
Cc: 'Gormley, Kenneth'; Jeffrey W. Moryan
Subject: RE: Gatto v. United

Jay,

As indicated in my email to you on December 15, Mr. Gatto's Facebook account was accessed to confirm the password was changed as he agreed to do at the December 1, 2011 Court Conference. Certainly, Mr. Gatto was aware that the parties were requesting information from Facebook in discovery. Thus, he should not have deactivated his account or altered or deleted it in anyway. Please provide any documentation Mr. Gatto has regarding the deactivation of his account.

As indicated on the Facebook website, if a Facebook account is deactivated, Facebook saves all information in the event the user wants to reactivate an account at some point in the future. If a user reactivates an account, everything will look the same as it did before the account was deactivated. If a user deactivates an account, it can be reactivated at any time simply by logging in with the user's login email address and password. Thus, plaintiff should be able to simply login with his email address and password that he recently provided to the parties.

We expect that plaintiff will reactivate his account immediately and that the documents and information we requested during our January 6, 2012 conference with Judge Waldor will be produced as soon as possible. Additionally, it was also agreed that plaintiff would provide a certification indicating that his Facebook profile and/or any content or information on his Facebook page or account was not deleted, modified, or altered in anyway since the December 1 Court Conference. Please also provide same as soon as possible.

Unless this issue is resolved immediately, we will be forced to bring this to the Court's attention. We view any deletion or destruction of any contents of plaintiff's Facebook page or account to constitute spoliation of evidence and will seek all appropriate relief from the Court.

Regards,
Laurie

Laurie B. Kachonick

Associate
Connell Foley LLP
85 Livingston Avenue
Roseland, NJ 07068
Office: (973) 535-0500 ext. 2373
Fax: (973) 535-9217
lkachonick@connellfoley.com
www.connellfoley.com
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Connell Foley LLP

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EXHIBIT Q

Laurie B. Kachonick

From: Laurie B. Kachonick
Sent: Wednesday, February 01, 2012 2:06 PM
To: 'Jay Mascolo'
Cc: 'Gormley, Kenneth'; Jeffrey W. Moryan
Subject: RE: Gatto v. United

Jay,

What is the status of this issue? According to the Facebook website, an account can be reactivated at any time. Please advise before the end of this week as to the status of your efforts to have the account reactivated. If it cannot be done, we will have to bring this issue to the Court's attention as soon as possible.

Regards,
Laurie

From: Jay Mascolo [mailto:JMascolo@rammlaw.com]
Sent: Monday, January 23, 2012 11:05 AM
To: Laurie B. Kachonick
Cc: 'Gormley, Kenneth'; Jeffrey W. Moryan
Subject: RE: Gatto v. United

Laurie,
I am personally working to reinstate the account, however, it is not as easy as you suggest because the time period to do this has expired. I will let you know about the progress, as I have a message directly to Facebook.
With respect to bringing this to the Courts attention and a claimfor spoiliation, I would be happy to do that. Frankly I was hoping to avoid it, so as to not bring to the Courts attention that Counsel accessed my clients account. There were representations made to us at the conference in the presence of the judge, that no one would access this besides facebook. And it occurred on two occasions.
My client was under no order to preserve the account. The deactivation occurred before our telephone conference. Hopefully, I can reinstate this thing, but if not, I do suggest we contact the court.
Jay
Sent from my Samsung Intercept™

"Laurie B. Kachonick" wrote:
Jay,

As indicated in my email to you on December 15, Mr. Gatto's Facebook account was accessed to confirm the password was changed as he agreed to do at the December 1, 2011 Court Conference. Certainly, Mr. Gatto was aware that the parties were requesting information from Facebook in discovery. Thus, he should not have deactivated his account or altered or deleted it in anyway. Please provide any documentation Mr. Gatto has regarding the deactivation of his account.

As indicated on the Facebook website, if a Facebook account is deactivated, Facebook saves all information in the event the user wants to reactivate an account at some point in the future. If a user reactivates an account, everything will look the same as it did before the account was deactivated. If a user deactivates an account, it can be reactivated at any time simply by logging in with the user's login email address and password. Thus, plaintiff should be able to simply login with his email address and password that he recently provided to the parties.

We expect that plaintiff will reactivate his account immediately and that the documents and information we requested during our January 6, 2012 conference with Judge Waldor will be produced as soon as possible. Additionally, it was also agreed that plaintiff would provide a certification indicating that his Facebook profile and/or any content or information on his Facebook page or account was not deleted,

EXHIBIT R

Laurie B. Kachonick

From: Jay Mascolo [JMascolo@rammlaw.com]
Sent: Wednesday, February 01, 2012 3:12 PM
To: Laurie B. Kachonick
Cc: 'Gormley, Kenneth'; Jeffrey W. Moryan
Subject: RE: Gatto v. United

Laurie,

Based on my information that is not accurate. The account cannot be reactivated once it is deleted.

As I explained, after the authorization was supplied by my client in Court and after the 2 subsequent breaches into his account, he deactivated the account. Apparently, you only have 14 days to reactivate it. This all occurred before our telephone conference with the Court on 1/6/12.

Since then, pursuant to my instructions, Mr. Gatto has attempted on several occasions to reactivate his account- via emails to Facebook and phone messages. This will all be documented in an Affidavit. He continues in these attempts presently but has not received any response from Facebook on the issue. We do not oppose a reinstatement of the account, however, we are unable to do it.

I have no problem bringing this to the Court's attention ASAP. I am on vacation next Monday through Wednesday.

Please advise.

Jay

From: Laurie B. Kachonick [mailto:LKachonick@connellfoley.com]
Sent: Wednesday, February 01, 2012 2:06 PM
To: Jay Mascolo
Cc: 'Gormley, Kenneth'; Jeffrey W. Moryan
Subject: RE: Gatto v. United

Jay,

What is the status of this issue? According to the Facebook website, an account can be reactivated at any time. Please advise before the end of this week as to the status of your efforts to have the account reactivated. If it cannot be done, we will have to bring this issue to the Court's attention as soon as possible.

Regards,
Laurie

From: Jay Mascolo [mailto:JMascolo@rammlaw.com]
Sent: Monday, January 23, 2012 11:05 AM
To: Laurie B. Kachonick
Cc: 'Gormley, Kenneth'; Jeffrey W. Moryan
Subject: RE: Gatto v. United

Laurie,
I am personally working to reinstate the account, however, it is not as easy as you suggest because the time period to do this has expired. I will let you know about the progress, as I have a message directly to Facebook.
With respect to bringing this to the Courts attention and a claimfor spoiliation, I would be happy to do that. Frankly I was hoping to avoid it,

EXHIBIT S

Laurie B. Kachonick

From: Laurie B. Kachonick
Sent: Thursday, February 02, 2012 10:33 AM
To: 'Gormley, Kenneth'; Jay Mascolo
Cc: Jeffrey W. Moryan
Subject: RE: Gatto v. United

I will also be away from tomorrow through next Tuesday. Jay, based on the information you previously provided, it is my understanding that Mr. Gatto deactivated his account, not deleted it. Please confirm exactly what action Mr. Gatto and provide any documentation regarding the deactivation/deletion as well as any and all efforts to reactivate the account. Thank you.

Regards,
Laurie

From: Gormley, Kenneth [mailto:KGormley@lockelord.com]
Sent: Thursday, February 02, 2012 7:25 AM
To: Jay Mascolo; Laurie B. Kachonick
Cc: Jeffrey W. Moryan
Subject: RE: Gatto v. United

Good morning. In the event that there is a hearing scheduled with the District Court on this issue, please note that I am available next Thursday and Friday (February 9 and 10). However, I will be out of the country on business the following week (February 13-17) and as a result, would request that no hearings be scheduled during that time period. It is also my understanding that a further telephone conference call with the Court is presently scheduled for February 23, 2012.

Thanks in advance. Please keep me posted on any proposed dates for a hearing on this issue.

Regards, Ken

From: Jay Mascolo [mailto:JMascolo@rammlaw.com]
Sent: Wednesday, February 01, 2012 3:12 PM
To: Laurie B. Kachonick
Cc: Gormley, Kenneth; Jeffrey W. Moryan
Subject: RE: Gatto v. United

Laurie,

Based on my information that is not accurate. The account cannot be reactivated once it is deleted.

As I explained, after the authorization was supplied by my client in Court and after the 2 subsequent breaches into his account, he deactivated the account. Apparently, you only have 14 days to reactivate it. This all occurred before our telephone conference with the Court on 1/6/12.

Since then, pursuant to my instructions, Mr. Gatto has attempted on several occasions to reactivate his account- via emails to Facebook and phone messages. This will all be documented in an Affidavit. He continues in these attempts presently but has not received any response from Facebook on the issue. We do not oppose a reinstatement of the account, however, we are unable to do it.

EXHIBIT T

Laurie B. Kachonick

From: Jay Mascolo [JMascolo@rammlaw.com]
Sent: Friday, February 03, 2012 4:53 PM
To: Laurie B. Kachonick; 'Gormley, Kenneth'
Cc: Jeffrey W. Moryan
Subject: RE: Gatto v. United
Attachments: Gatto v. United, et al. Facebook Issue-120203.PDF

Laurie,

Attached are all of the documents in my possession regarding this Facebook issue. The last two documents are emails dated 1/25/12 and 2/2/12 from my client directly to me for which he is waiving attorney-client privilege. It is information that will most likely end up in an Affidavit.

I am on vacation until Thursday, 2/9/12. I would just ask that we hold off until then on any requests for hearings or intervention from the Court on this issue.

Thank you.

Jay

From: Laurie B. Kachonick [mailto:LKachonick@connellfoley.com]
Sent: Thursday, February 02, 2012 10:33 AM
To: 'Gormley, Kenneth'; Jay Mascolo
Cc: Jeffrey W. Moryan
Subject: RE: Gatto v. United

I will also be away from tomorrow through next Tuesday. Jay, based on the information you previously provided, it is my understanding that Mr. Gatto deactivated his account, not deleted it. Please confirm exactly what action Mr. Gatto and provide any documentation regarding the deactivation/deletion as well as any and all efforts to reactivate the account. Thank you.

Regards,
Laurie

From: Gormley, Kenneth [mailto:KGormley@lockelord.com]
Sent: Thursday, February 02, 2012 7:25 AM
To: Jay Mascolo; Laurie B. Kachonick
Cc: Jeffrey W. Moryan
Subject: RE: Gatto v. United

Good morning. In the event that there is a hearing scheduled with the District Court on this issue, please note that I am available next Thursday and Friday (February 9 and 10). However, I will be out of the country on business the following week (February 13-17) and as a result, would request that no hearings be scheduled during that time period. It is also my understanding that a further telephone conference call with the Court is presently scheduled for February 23, 2012.

Thanks in advance. Please keep me posted on any proposed dates for a hearing on this issue.

Regards, Ken

Jay Mascolo

Subject: FW: Facebook login using an unknown device from Bloomfield, NJ, US (IP=204.142.156.10)

----- Forwarded Message -----
From: Facebook <fbmessage+zrdovrhe6lcf@facebookmail.com>
To: Frank Gatto <f.gatto@yahoo.com>
Sent: Tuesday, December 6, 2011 11:45 AM
Subject: Facebook login using an unknown device from Bloomfield, NJ, US (IP=204.142.156.10)

Hi Frank Gatto,

A new unknown device logged into your Facebook account (Tuesday, December 6, 2011 at 8:45am) from Bloomfield, NJ, US (IP=204.142.156.10). (Note: This location is based on information from your ISP or wireless provider.)

Was this you? If so, you can disregard the rest of this email.

If this wasn't you, please follow the link below to protect your Facebook account information:
https://www.facebook.com/checkpoint/checkpointme?u=100001635276713&n=2IVoKdMt

To learn how login notifications like this one can help you to protect your account information, visit the Help Center: http://www.facebook.com/help/?topic=loginnotifications.
Please note: Facebook will never request your login information through email.

Thanks,
The Facebook Team

Jay Mascolo

Subject: FW: Facebook login using an unknown device from Bloomfield, NJ, US (IP=204.142.156.10)

----- Forwarded Message -----
From: Facebook <fbmessage+zrdovrhe6lcf@facebookmail.com>
To: Frank Gatto <f.gatto@yahoo.com>
Sent: Wednesday, December 7, 2011 2:59 PM
Subject: Facebook login using an unknown device from Bloomfield, NJ, US (IP=204.142.156.10)

Hi Frank Gatto,

A new unknown device logged into your Facebook account (Wednesday, December 7, 2011 at 11:59am) from Bloomfield, NJ, US (IP=204.142.156.10). (Note: This location is based on information from your ISP or wireless provider.)

Was this you? If so, you can disregard the rest of this email.

If this wasn't you, please follow the link below to protect your Facebook account information:
https://www.facebook.com/checkpoint/checkpointme?u=100001635276713&n=2IVoKdMt

To learn how login notifications like this one can help you to protect your account information, visit the Help Center: http://www.facebook.com/help/?topic=loginnotifications.
Please note: Facebook will never request your login information through email.

Thanks,
The Facebook Team

Review Recent Login

Someone recently tried to log in to your account from an unrecognized device or mobile device. Because you enabled login notifications, your account is temporarily locked.

Please complete the following steps to regain access to your account.

Continue

EXHIBIT U

Jay Mascolo

Subject: FW: You have deactivated your Facebook account

----- Forwarded Message -----
From: Facebook <noreply@facebookmail.com>
To: f.gatto@yahoo.com
Sent: Friday, December 16, 2011 9:01 AM
Subject: You have deactivated your Facebook account

facebook

Hi Frank,

You have deactivated your Facebook account. You can reactivate your account at any time by logging into Facebook using your old login email and password. You will be able to use the site like you used to.

Thanks,
The Facebook Team

Sign in to Facebook and start connecting

Sign In

To reactivate, follow the link below:
https://www.facebook.com/home.php

This message was sent to f.gatto@yahoo.com. If you don't want to receive these emails from Facebook in the future, please click: unsubscribe.
Facebook, Inc. Attention: Department 415 P.O Box 10005 Palo Alto CA 94303

EXHIBIT V

Jay Mascolo

Subject: FW: Account Scheduled for Deletion

----- Forwarded Message -----
From: Facebook <notification+zrdovrhe6lcf@facebookmail.com>
To: Frank <f.gatto@yahoo.com>
Sent: Friday, December 16, 2011 9:17 AM
Subject: Account Scheduled for Deletion

Hi Frank,

We have received a request to permanently delete your account. Your account has been deactivated from the site and will be permanently deleted within 14 days.

If you did not request to permanently delete your account, please login to Facebook to cancel this request:

https://www.facebook.com/login.php

Thanks,
The Facebook Team